

PETITION FOR ZONING RE-CLASSIFICATION  
SPECIAL EXCEPTION AND/OR VARIANCE

TO THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the herein described property be re-classified, pursuant to the Zoning Law of Baltimore County, from an DR 5.5 zone to an R-O zone, for the reasons given in the attached statement, and (2) to seek a Special Exception under the Zoning Law and Zoning Regulations of Baltimore County to use the herein described property as residential.

and/or the undersigned hereby petition the Board of Appeals to grant the following request: that the Zoning Law and Zoning Regulations of Baltimore County be amended to allow the herein described property to be used as residential.

NOT

and/or the undersigned hereby petition the Board of Appeals to grant the following request: that the Zoning Law and Zoning Regulations of Baltimore County be amended to allow the herein described property to be used as residential.

RECEIVED  
BALTIMORE COUNTY  
Aug 31 12 13 PM '81  
COUNTY BOARD  
OF APPEALS  
BY

Property is to be posted and advertised as prescribed by The Baltimore County Code.

I, or we, agree to pay expenses of above Re-classification, Special Exception and/or Variance, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Contract Purchaser: Not applicable  
(Type or Print Name)  
Signature: \_\_\_\_\_  
Address: \_\_\_\_\_  
City and State: \_\_\_\_\_  
Attorney for Petitioner:  
R. Taylor McLean  
(Type or Print Name)  
Signature: \_\_\_\_\_  
102 West Pennsylvania Avenue  
Address  
Towson, Maryland 21204  
City and State  
Attorney's Telephone No.: 823-1800

Leg 1 Owner(s):  
DORRIS S. FLYNN  
(Type or Print Name)  
Signature: \_\_\_\_\_  
Address: \_\_\_\_\_  
City and State: \_\_\_\_\_  
Name, address and phone number of legal owner, contract purchaser or representative to be contacted  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone No.: \_\_\_\_\_

BABO-Form 1

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

October 30, 1981

COUNTY OFFICE BLDG.  
111 W. Chesapeake Ave.  
Towson, Maryland 21204

Chairman  
Nicholas B. Commodari

MEMBERS  
Bureau of Engineering  
Department of Traffic Engineering  
State Roads Commission  
Bureau of Fire Prevention  
Health Department  
Project Planning  
Building Department  
Board of Education  
Zoning Administration  
Industrial Development

R. Taylor McLean, Esquire  
102 West Pennsylvania Avenue  
Towson, Maryland 21204

RE: Item No. 11 - Cycle No. II  
Petitioner - Dorris S. Flynn  
Reclassification Petition

Dear Mr. McLean:

This reclassification petition has been timely filed with the Board of Appeals for a public hearing within the October 1981 - April 1982 reclassification cycle (Cycle II). It has been reviewed by the zoning office as to form and content and has also been reviewed by the Zoning Plans Advisory Committee. The review and enclosed comments from the Committee are intended to provide you and the Board of Appeals with an insight as to possible conflicts or problems that could arise from the requested reclassification or uses and improvements that may be specified as part of the request. They are not intended to indicate the appropriateness of the zoning action requested.

If it has been suggested that the petition forms, descriptions, briefs, and/or the site plans be amended so as to reflect better compliance with the zoning regulations and commenting agencies' standards and policies, you are requested to review these comments, make your own judgment as to their accuracy and submit the necessary amendments to this office before November 30. In the event that any requested amendments are not received prior to this date, the petition will be advertised as originally submitted.

The subject property, presently zoned D.R.5.5 and located in the northwest corner of Timonium Road and Gerard Avenue, is improved with two dwellings, two garages, and a shed-type building. To the east and south along Timonium Road and Gerard Avenue, are individual dwellings also zoned D.R.5.5, while land zoned B.L. and improved with commercial uses and an office building, zoned R.O., exist to the north and west, respectively.

In view of the fact that the submitted site plan does not indicate proposed development of the subject property, the enclosed comments from this Committee are general in nature. If the requested reclassification is granted, a public hearing and/or Planning Board review and approval would be required prior to development. At that time more specific comments would be provided.

Item No. 11 - Cycle No. II  
Dorris S. Flynn  
Reclassification Petition

If you have any questions concerning the enclosed comments, please feel free to contact me at 474-3391. Notice of the specific hearing date, which will be between March 1 and June 30, 1982, will be forwarded to you in the future.

Very truly yours,

*Nicholas B. Commodari*  
NICHOLAS B. COMMODARI  
Chairman  
Zoning Plans Advisory Committee

NBC:bsc

Enclosures

cc: George William Stephens, Jr., & Assoc., Inc.  
23 Allegheny Avenue  
Towson, Maryland 21204

BALTIMORE COUNTY  
DEPARTMENT OF PUBLIC WORKS  
TOWSON, MARYLAND 21204

HARRY J. PISTEL, P.E.  
DIRECTOR

September 28, 1981

Mr. William T. Hackett, Chairman  
Board of Appeals  
Court House  
Towson, Maryland 21204

Re: Item #11 Zoning Cycle II (Oct. 1981-Apr. 1982)  
Property Owner: Dorris S. Flynn  
N/W cor. Timonium Rd. and Gerard Ave.  
Existing Zoning: DR 5.5  
Proposed Zoning: R-O  
Acres: 1.540 District: 8th

Dear Mr. Hackett:

The following comments are furnished in regard to the plat submitted to this office for review by the Zoning Advisory Committee in connection with the subject item.

General:

This property comprises lots and portions thereof of Section A, plat of Yorkshire, recorded W.P.C. 7, Folio 71.

Highways:

Timonium Road and Gerard Avenue are existing County roads; Timonium Road is improved as a 42-foot closed section roadway on an 80-foot right-of-way, further highway improvements are not proposed at this time.

Gerard Avenue is proposed to be further improved as a 40-foot closed section roadway on a 50-foot right-of-way with fillet areas for sight distance at the Timonium Road intersection.

The entrance locations are subject to approval by the Department of Traffic Engineering, and shall be constructed in accordance with Baltimore County Standards and Specifications.

Sediment Control:

Development of this property through stripping, grading and stabilization could result in a sediment pollution problem, damaging private and public holdings downstream of the property. A grading permit is, therefore, necessary for all grading, including the stripping of top soil.

Storm Drains:

Provisions for accommodating storm water or drainage have not been indicated on the submitted plan.

Item #11 Zoning Cycle II (Oct. 1981-Apr. 1982)  
Property Owner: Dorris S. Flynn  
Page 2  
September 28, 1981

Storm Drains: (Cont'd)

The Petitioner must provide necessary drainage facilities (temporary or permanent) to prevent creating any nuisances or damages to adjacent properties, especially by the concentration of surface waters. Correction of any problem which may result, due to improper grading or improper installation of drainage facilities, would be the full responsibility of the Petitioner.

Water and Sanitary Sewer:

There are 8 and 16-inch public water mains in Gerard Avenue and Timonium Road, respectively; 8-inch public sanitary sewerage exists in both roads.

Very truly yours,

*Robert A. Morton*  
ROBERT A. MORTON, P.E., Chief  
Bureau of Public Services

RAM:EAM:FWR:ss

cc: Jack Wimbley

S-NE Key Sheet  
53 FW 2 Pos. Sheet  
NW 14 A Topo  
60 Tax Map

BALTIMORE COUNTY  
OFFICE OF PLANNING AND ZONING  
TOWSON, MARYLAND 21204  
494-3211

NORMAN E. GENDER  
DIRECTOR

October 29, 1981

Mr. William Hackett - Chairman  
Board of Appeals  
Room 219 - Court House  
Towson, Maryland 21204

Dear Mr. Hackett:

Comments on Item #11, Zoning Cycle II, - 1981, are as follows:

Property Owner: Dorris S. Flynn  
Location: NW/corner Timonium Road and Gerard Avenue  
Acres: 1.540  
District: 8th

This office has reviewed the subject petition and offers the following comments. These comments are not intended to indicate the appropriateness of the zoning in question, but are to assure that all parties are made aware of plans or problems with regard to development plans that may have a bearing on this petition.

The subject property is located in Traffic Level of Service Area controlled by a "F" intersection.

If the petition is granted R.O., the owner would have to comply with Section 203 of the Zoning Regulations.

Very truly yours,

*John L. Wimbley*  
John L. Wimbley  
Planner III  
Current Planning and Development

JLW:rh

baltimore county  
department of traffic engineering  
TOWSON, MARYLAND 21204  
(301) 494-3550

STEPHEN E. COLLINS  
DIRECTOR

October 8, 1981

Mr. William Hackett  
Chairman, Board of Appeals  
Office of Law, Courthouse  
Towson, Maryland 21204

Cycle II - Meeting of September 14, 1981  
Item No. - 11  
Property Owner: Dorris S. Flynn  
Location: NW/Corner Timonium Road and Gerard Avenue  
Existing Zoning: D.R. 5.5  
Proposed Zoning: R-O  
Acres: 1.540  
District: 8th

Dear Mr. Hackett:

The existing D.R. 5.5 zoning can be expected to generate approximately 80 trips per day and the proposed R-O zoning can be expected to generate 460 trips per day.

The intersection of Timonium Road and York Road is at D level of service.

*Michael S. Fladigan*  
Michael S. Fladigan  
Traffic Engineering Associate II

MSF/r1j

BALTIMORE COUNTY  
DEPARTMENT OF HEALTH  
TOWSON, MARYLAND 21204

DONALD J. ROOP, M.D., M.P.H.  
DEPUTY STATE & COUNTY HEALTH OFFICER

September 30, 1981

Mr. Walter Reiter, Chairman  
Board of Appeals  
Court House  
Towson, Maryland 21204

Dear Mr. Reiter:

Comments on Item #11, Zoning Advisory Committee Meeting for Cycle II, are as follows:

Property Owner: Dorris S. Flynn  
Location: NW/Corner Timonium Road and Gerard Avenue  
Existing Zoning: D.R. 5.5  
Proposed Zoning: R-O  
Acres: 1.540  
District: 8th

Metropolitan water and sewer are available.

The Zoning Plan, as submitted, does not include enough information to enable the Baltimore County Department of Health to make complete comments.

Very truly yours,

*Ian J. Forrest*  
Ian J. Forrest, Director  
BUREAU OF ENVIRONMENTAL SERVICES

LJF/JRF/mgt



## BALTIMORE COUNTY, MARYLAND

## INTER-OFFICE CORRESPONDENCE

William Hackett-Chairman  
Board of Appeals  
TO: Nick Commodari  
FROM: Charles E. Flynn  
Cycle 11 - 1981  
SUBJECT: Item #11 Zoning Advisory Committee Meeting 9-14-81

Date: September 23, 1981

Property Owner: Doris S. Flynn  
Location: NW/Corner Timonium Road and Gerard Avenue  
Existing Zoning: D.R. 5.5  
Proposed Zoning: R-0

Acres: 1.540  
District: 8th

In conversion of dwelling "Use Group B-3 to office use group B".  
Section 202 of the Baltimore County Building Code, Section 105.2  
requires certain improvements to be made to upgrade the structure  
to the proposed commercial useage.

A change of occupancy permit and an alteration permit are required.  
Plans showing how the structure will be made to comply with the  
new code requirements as well as the Section 05.01.07 Code of Maryland  
Regulations (Handicapped Code) shall be submitted along with a permit  
application before a permit can be issued. The structure shall not  
be occupied as a new use group until the alterations are complete and  
an occupancy permit is issued.

*Charles E. Flynn*  
Charles E. Flynn  
Plans Review Chief

RECEIVED  
BALTIMORE COUNTY  
COUNTY BOARD OF APPEALS  
SEP 25 10 51 AM '81  
BY: \_\_\_\_\_

CER:rrj

## 8th DISTRICT

ZONING: Petition for Reclassification  
LOCATION: Northwest corner of Timonium Road and Gerard Avenue  
DATE & TIME: Wednesday, April 21, 1982, at 10:00 A.M.  
PUBLIC HEARING: Room 218, Courthouse, Towson, Maryland

The County Board of Appeals for Baltimore County by authority of the Baltimore County Charter will hold a public hearing:

Present Zoning: D.R. 5.5  
Proposed Zoning: R. O.

All that parcel of land in the Eighth District of Baltimore County

Being the property of Dorris S. Flynn as shown on plat plan filed with the Zoning Department.

Hearing Date: Wednesday, April 21, 1982 at 10:00 A.M.  
Public Hearing: Room 218, Courthouse, Towson, Maryland

BY ORDER OF  
WILLIAM T. HACKETT, CHAIRMAN  
COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY

## CERTIFICATE OF PUBLICATION

TOWSON, MD., April 1, 1982

THIS IS TO CERTIFY, that the annexed advertisement was  
published in THE JEFFERSONIAN, a weekly newspaper printed  
and published in Towson, Baltimore County, Md., on the 1st day of April, 1982, the 1st publication  
appearing on the 1st day of April, 1982.

THE JEFFERSONIAN,

*L. Frank Smith*  
Manager.

Cost of Advertisement, \$\_\_\_\_\_

PETITION FOR RECLASSIFICATION  
ZONING: Petition for Reclassification  
LOCATION: Northwest corner of Timonium Road and Gerard Avenue  
DATE & TIME: Wednesday, April 21, 1982, at 10:00 A.M.  
PUBLIC HEARING: Room 218, Courthouse, Towson, Maryland  
The County Board of Appeals for Baltimore County by authority of the Baltimore County Charter will hold a public hearing:  
Present Zoning: D.R. 5.5  
Proposed Zoning: R. O.  
All that parcel of land in the Eighth District of Baltimore County

BALTIMORE COUNTY, MARYLAND  
OFFICE OF FINANCE - REVENUE DIVISION  
MISCELLANEOUS CASH RECEIPT  
No. 106806  
DATE: 3/18/82 ACCOUNT: 01-662  
AMOUNT: \$50.00  
RECEIVED BY: R. Taylor McLean, Esquire  
FROM: \_\_\_\_\_  
FOR: Filing Fee for Case #R-82-188 (Flynn)  
381 JAMA 16 500004  
VALIDATION OR SIGNATURE OF CASHIER

Petition for  
Re-Classification  
ZONING: Petition for Reclassification  
LOCATION: Northwest corner of Timonium Road and Gerard Avenue  
DATE & TIME: Wednesday, April 21, 1982, at 10:00 A.M.  
PUBLIC HEARING: Room 218, Courthouse, Towson, Maryland  
The County Board of Appeals for Baltimore County by authority of the Baltimore County Charter will hold a public hearing:  
Present Zoning: D.R. 5.5  
Proposed Zoning: R. O.  
All that parcel of land in the Eighth District of Baltimore County

Appeals for Baltimore County by authority of the Baltimore County Charter will hold a public hearing:  
Present Zoning: D.R. 5.5  
Proposed Zoning: R. O.  
All that parcel of land in the Eighth District of Baltimore County

## The Times

Middle River, Md., April 1, 1982

This is to Certify, That the annexed

was inserted in The Times, a newspaper printed  
and published in Baltimore County, once in each  
of \_\_\_\_\_ successive  
weeks before the \_\_\_\_\_ day of \_\_\_\_\_, 1982.

*Amos*  
Publisher.

January 18, 1982

BALTIMORE COUNTY  
OFFICE OF PLANNING & ZONING  
TOWSON, MARYLAND 21204  
494-3353

WILLIAM E. HAMMOND  
ZONING COMMISSIONER

R. Taylor McLean, Esquire  
102 W. Pennsylvania Avenue  
Towson, Maryland 21204

RE: Petition for Re-classification  
NW/cor. of Timonium Rd. & Gerard Ave.  
Dorris S. Flynn - Petitioner  
Cycle #2 - Item #11

Dear Mr. McLean:

This is to advise you that \$96.89 is due for the first advertising  
of the above property. Two additional bills will be forwarded to you in the near future.  
All bills must be paid before an order is issued.

Please make check payable to Baltimore County, Maryland, and remit to Karen Riegel,  
Room 113, County Office Building, Towson, Maryland 21204, before the hearing.

Very truly yours,

*William E. Hammond*  
WILLIAM E. HAMMOND  
Zoning Commissioner

BALTIMORE COUNTY, MARYLAND  
OFFICE OF FINANCE - REVENUE DIVISION  
MISCELLANEOUS CASH RECEIPT  
No. 104550  
DATE: 1/18/82 ACCOUNT: 01-662  
AMOUNT: \$96.89  
RECEIVED BY: Dorris S. Flynn  
FROM: \_\_\_\_\_  
FOR: 1st Billage add of Item 11, cycle 2  
372 JAMA 4 96854  
VALIDATION OR SIGNATURE OF CASHIER

Travis East #420  
3337 Ocean Blvd.  
Deerfield Bx. 76-3344

Ms Karen Riegel  
Baltimore County Office of Planning & Zoning  
Towson Md. 21204

Dear Ms Riegel  
Enclosed please find my check  
#446 in the amount of \$96.89 for  
first advertising of my property.  
Re: Petition for Re-classification  
N.W. cor. of Timonium Rd. & Gerard Ave.  
Dorris S. Flynn - Petitioner  
Cycle #2 Item #11

Sincerely,  
Dorris Flynn

BALTIMORE COUNTY  
OFFICE OF PLANNING & ZONING  
TOWSON, MARYLAND 21204  
494-3353

WILLIAM E. HAMMOND  
ZONING COMMISSIONER

R. Taylor McLean, Esquire  
102 W. Pennsylvania Avenue  
Towson, Maryland 21204

RE: Petition for Reclassification  
NW/cor. of Timonium Rd. & Gerard Ave.  
Dorris S. Flynn - Petitioner  
Cycle 2 - Item 11  
Case #R-82-188

Dear Mr. McLean:

This is to advise that \$52.75 is due for the 2nd full page  
add of the cycle 2 billing. You have already been billed for the 1st full page add.  
A third bill for the individual advertising and posting of the above property will  
be forthcoming. All bills must be paid before an order is issued.

Please make check payable to Baltimore County, Maryland, and remit to  
Karen Riegel, Room 113, County Office Building, Towson, Maryland, 21204, as  
soon as possible.

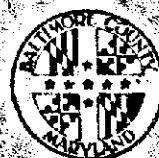
Very truly yours,

BALTIMORE COUNTY, MARYLAND  
OFFICE OF FINANCE - REVENUE DIVISION  
MISCELLANEOUS CASH RECEIPT  
No. 105755  
DATE: 3/16/82 ACCOUNT: 01-662  
AMOUNT: \$52.75  
RECEIVED BY: R. Taylor McLean, Esquire  
FROM: \_\_\_\_\_  
FOR: 2nd full page add of Case #R-82-188 (Flynn)  
382 JAMA 16 527546  
VALIDATION OR SIGNATURE OF CASHIER

CERTIFICATE OF POSTING  
ZONING DEPARTMENT OF BALTIMORE COUNTY  
Towson, Maryland

District: 8 Date of Posting: 4/14/82  
Posted for: Petition for Reclassification  
Petitioner: Dorris S. Flynn  
Location of property: NW/cor. of Timonium Rd. & Gerard Ave.  
Location of Sign: 1st intersection of Timonium Rd. & Gerard Ave.  
Remarks: \_\_\_\_\_  
Posted by: Karen Riegel Date of return: 4/7/82  
Signature: \_\_\_\_\_





BALTIMORE COUNTY  
OFFICE OF PLANNING & ZONING  
TOWSON, MARYLAND 21204  
494-3353

WILLIAM E. HAMMOND  
ZONING COMMISSIONER

April 14, 1982

R. Taylor McLean, Esquire  
102 W. Pennsylvania Avenue  
Towson, Maryland 21204

RE: Petition for Reclassification  
NW corner Timonium Rd. & Gerard Ave.  
Doris S. Flynn - Petitioner  
Cycle 2 - Item 11  
No. R-82-188

Dear Sir:

This is to advise you that \$74.72 is due for advertising and posting of the above property.

Please make check payable to Baltimore County, Maryland, and remit to The Zoning Office, Room 113, County Office Building, Towson, Maryland 21204 before the hearing.

Very truly yours,

*[Signature]*  
WILLIAM E. HAMMOND

BALTIMORE COUNTY, MARYLAND  
OFFICE OF FINANCE - REVENUE DIVISION  
MISCELLANEOUS CASH RECEIPT  
No. 107612  
DATE 4/21/82 ACCOUNT 61-662  
AMOUNT \$74.72  
RECEIVED FROM R. Taylor McLean, Esquire  
FOR Advertising & Posting Case No. R-82-188  
897 12478 22 74.72  
VALIDATION OR SIGNATURE OF CARRIER

ROYSTON, MUELLER, MCLEAN & REID  
ATTORNEYS AT LAW  
SUITE 600  
102 WEST PENNSYLVANIA AVENUE  
TOWSON, MARYLAND 21204  
1300 822-1800

OF COUNSEL  
JOHN L. ASKEW

March 16, 1982

Zoning Office  
County Office Building  
Towson, Maryland 21204

ATTN: Karen Riegel

Re: Petition for Reclassification  
of 20 Gerard Avenue, Timonium, Md.

Dear Ms. Riegel:

Enclosed is this firm's check in the amount of \$50.00 made payable to Baltimore County, Maryland in place of our check no. 2503. I understand you will return that old check to us, and that this substitution is necessary because that check is too old to be deposited.

Sincerely,

*[Signature]*  
R. Taylor McLean

RTMcL:jbb  
Enclosure

CIRCUIT COURT FOR BALTIMORE COUNTY

DOCKET 14 PAGE 249 CASE NO. 82-M-244 CATEGORY APPEAL

ADVANCE COSTS

Pliff's Atty

Clerk 60.00

Sheriff

Paid 8/13/81 Per L.A.

Receipt No. 97214

ADDITIONAL COSTS

Defdt's Atty

Clerk

Sheriff

IN THE MATTER OF THE APPLICATION OF  
DORRIS S. FLYNN  
K. REZONING OF PROPERTY FROM D.R. 5.5 to  
R.O. Zone  
NW corner Timonium Rd. & Gerard Ave. 8th District

R. Taylor McLean  
102 W. Penna. Ave. (04)

THE PEOPLE'S COUNSEL FOR BALTIMORE COUNTY  
Protestant

John W. Hessian, III  
Peter Max Zimmerman  
Rm. 223, Court House (04)  
494-2188

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

- (1) Aug. 13, 1982 - Order for Appeal and Petition for Appeal from the Order of the County Board of Appeals of Baltimore County fd.
- (2) Aug. 16, 1982 - Certificate of Notice fd.
- (3) Aug. 31, 1982 Answer of DORRIS S. FLYNN to Petition on Appeal fd.
- (4) Sept. 9, 1982 - Transcript of Record fd.
- (5) Sept. 9, 1982 - Notice of Filing of Record fd. Copies sent.
- (6) Sept. 27, 1982 - Appellant's Memorandum fd.
- (7) Oct. 20, 1982 Memorandum of Property Owner, MRS. FLYNN, (As Per Md. Rule B 12) fd.  
November 8, 1982 Hon. James H. Langrall. Hearing had. Held suburbia.
- (8) Nov. 10, 1982 Opinion & Order of Court that the decision of the County Board of Appeals of Baltimore County is AFFIRMED fd. (JHL) Order signed 11/9/82

RECEIVED  
BALTIMORE COUNTY  
Nov 12 10 00 AM '82  
COUNTY BOARD  
OF APPEALS  
BY: *[Signature]*

DOCKET 14 PAGE 249 CASE NO. 82-M-244

IN THE MATTER OF THE APPLICATION OF DORRIS S. FLYNN FOR REZONING OF PROPERTY from D.R. 5.5 to R.O. Zone NW corner Timonium Road and Gerard Avenue, 8th District  
Zoning Case No. R-82-188

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

AT LAW

Misc. File No. 82M244

APPELLANTS MEMORANDUM

People's Counsel for Baltimore County, pursuant to Maryland Rule 8.12, states the following:

The subject property, zoned D.R. 5.5, (Density Residential), consists of 1.54 acres on the northwest corner of Timonium Road and Gerard Avenue. It contains two occupied two-story dwellings, one beautifully landscaped with a two-car garage. To the north, across a right-of-way, are commercial enterprises forming part of the Timonium Shopping Center zoned B.L. (Business Local). Immediately to the west is an office building with R.O. (Residential Office) zoning. Across Timonium Road and Gerard Avenue to the east and south are numerous single-family dwellings zoned D.R. 5.5. The property is identified by the area crosshatched on the attached base map, which accompanied the recommendation of the Planning Board in this case.

During the 1980 Comprehensive Zoning Map process, the property was not identified as a specific issue. Upon the filing of this petition, requesting R.O. zoning, the Planning Board reviewed and recommended that the westernmost .90 acre be changed to R.O., leaving the remainder in D.R. 5.5. The County Board of Appeals thereupon held an evidentiary hearing, and granted R.O. for the entire site. As a result, pursuant to the pertinent provisions of Section 203 of the Baltimore County Zoning Regulations (hereinafter BCZR), the Petitioner would be entitled to convert the existing dwellings to office use or, in the alternative, to raze them and construct a new "Class B" office building, subject to approval by special exception. Such a building could potentially have 3 stories and occupy 33,000 square feet of floor space, together with 25,000 square feet of parking area.

PETITIONER'S CASE

At the hearing, the Petitioner, Dorris Flynn, testified, followed by George Gavrelis, a planner. Flynn testified that she inherited the property in 1980. While she herself resided in Florida, she said that the property is not satisfactory for residential use because of the "commercial around us." (T. 10) She cited noise and odors from the various commercial uses to the north - a gas station, theater, Chinese restaurant and fish market - as well as commercial traffic passing close to the rear of the property. (T. 10-13) She also noted the commercial uses up and down York Road, to the west, including the Timonium Race Track, as well as a "7-11" on the south side of Timonium Road. Some of the traffic from Timonium Road would cut through Gerard Avenue, taking a shortcut to avoid the York-Timonium intersection. She acknowledged that she has a nice house on the property. She lives there a few months of the year to maintain it because she inherited it. She would not ordinarily want to live there or sell it as a residence. (T. 14-15) She also disagreed with the recommendation of the Planning Board to rezone only the westerly portion of the property because the remainder would still suffer the same problems.

Mr. Gavrelis, in his direct testimony, proceeded to describe the neighborhood in more detail, and noted particularly the lack of screening provided by the office building to the west or the shopping center to the north. (T. 20-25) He felt that Gerard Avenue was not a local residential street, despite the adjoining residential uses, because of the commercial traffic heading to York Road and parking in connection with nearby commercial activities. He acknowledged the six houses across Gerard Avenue, three fronting on Gerard Avenue and three fronting on Timonium Road, the latter "leaving their rear yards exposed to view from the subject property." (T. 25) He opined that the subject property "is really an integral part of the land uses which occur to the west and the north, either office or commercial, all of which are nonresidential." (Ibid) He attributed no significance to the residential uses along Gerard Avenue and Timonium Road.

- 3 -

He stated that the County Council erred in 1980 because the newly created R.O. zone provided "a perfect tool" to remedy the land use conflicts affecting this site. (T. 27) Accordingly, despite the two dwellings in residential use on the site and the adjoining residential uses across and down the street, he concluded that the property is "not reasonable for residential uses" but "perfectly suited for office usage within the context of the R.O. zone." (Ibid) Otherwise stated, the conversion of existing dwellings or the potential erection of a new structure "was a more rational way of dealing with this property." (T. 27-30) Further addressing the question of whether reclassification should more appropriately be considered in the comprehensive process, he noted that the petition process was a proper means for dealing with error on an interim basis. (T. 30-32) Consistent with Mrs. Flynn, he also disagreed with the Planning Board's recommendation to divide the zoning on the property and stated that the property must be dealt with as an entity. (T. 33)

On cross-examination, Gavrelis admitted that to show error, the difficulties alleged must be "reasonably unique" to the property. (T. 39) He differentiated the residences along Gerard as not affected by the shopping center and existing office building, but acknowledged that they suffered more immediate difficulties from the commercial activity on York Road. (T. 40-43) As to other residences in back of the shopping center, on Edgemear, he admitted an effect, but thought the screening was better. (T. 44) As it was put,

"Q So that basically it is a question of the degree of impact that differentiates these properties?

"A Well my evaluation of this case has really dealt with the impact on the subject property, and the relationship the subject property has to its adjoining neighborhood." (T. 43)

- 4 -

PEOPLE'S COUNSEL'S CASE

James Howell, the County planner responsible for review and evaluation of reclassification petitions, identified the Planning Board recommendation. (T. 60) In this context, he said that the question of zoning error was different from the question of the ideal planning solution to the difficulties of this site. While adhering to the Board recommendation to split the zoning on the property as a "pure planning solution," he doubted that this "squares with the idea," as he understood it, "of economic confisication and that type of proof of error." (T. 62) He also underlined that the comprehensive zoning process would be a vehicle for consideration of "other properties in the immediate area... that are also impacted by adjacent nonresidential uses." (T. 61) As to the matter of parking, which Gavrelis had stressed, Howell described the regulations which require provision of screening by nonresidential establishments. BCZR Section 409. The lack of screening, therefore, was unusual and probably illegal. (T. 63) This could be pursued as a violation case.

Considering the residential properties to the south and east, he stated that the granting of the petition, particularly the granting of the front portion, would have a domino effect and reiterated his doubt that error was proven or that the petition process was appropriate to address the area. (T. 64-66)

BOARD OF APPEALS OPINION

The Board of Appeals in its Opinion (attached hereto) summarized sympathetically the testimony of Flynn and Gavrelis. It characterized Howell's testimony as being "in support of the Planning Board's recommendation" but omitted his careful distinction between the planning of an ideal solution and zoning error. (p. 2) Likewise, the Board failed to recognize the substantial doubt expressed as to any proof of error. Ultimately, in approving the rezoning for the entire site, the Board appeared to come down on the point that this property seems suited or "to watch the intentions of Bill 13-80 perfectly." (p. 2) The



Board's judgment was that the requested R.O. zoning "would provide a reasonable use," and "a buffer area between the shopping center and the homes on Gerard Avenue." (p. 3)

The Board ignored the continuing residential use on the site and the impact of the rezoning on nearby residential properties. Moreover, it held it "unlikely to assume that had this site also been an issue (in 1980) that it would have been denied." (p. 2)

#### ARGUMENT

Pursuant to Section 2-581(j) of the Baltimore County Code, consideration of the petition for zoning reclassification involves a two-step analysis:

- (1) Application of the change or mistake rule; and
- (2) Consideration of whether or not the requested reclassification is warranted.

Turning to the important applicable zoning principles, "...perhaps none is more rudimentary than the strong presumption of the correctness of original zoning and of comprehensive rezoning." Otherwise stated, "...strong evidence of error is required to make the issue of mistake in comprehensive zoning fairly debatable and unless such strong evidence is presented by the applicant, the action of the Board in granting a reclassification is arbitrary and capricious." Boyce v. Sembly, 25 Md. App. 43, 334 A.2d 137 (1975).

Moreover, as the issue of confiscation is often interrelated with mistake, it need be stated that,

"Applicant must show that he has been deprived of all reasonable use of his property and that it cannot be used for any of the permitted uses in the existing zone." Stratakis v. Beauchamp, 268 Md. 643, 304 A.2d 244 (1973).

In the present case, the applicant quite simply failed to meet the burden to present evidence that the County Council ignored specific facts material to the zoning, failed to take undisputed facts into consideration, or caused a deprivation of all reasonable use of the property.

IN THE MATTER OF THE APPLICATION OF DORRIS S. FLYNN FOR REZONING OF PROPERTY FROM D.R. 5.5 TO R.O. NW corner Timonium Road and Gerard Avenue 8th District

BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY No. R-82-188

#### OPINION

This case comes before this Board on petition for reclassification from D.R. 5.5 to an R.O. zone for property located on the northwest corner of Timonium Road and Gerard Avenue in the Eighth Election District of Baltimore County, said property containing some 1.5+ acres.

The testimony presented produced the following facts regarding the subject site. The parcel is all that remains from farmland on which the existing home was erected forty years ago. There is also on the property a garage and an old carriage house in need of repair or razing. Mrs. Dorris Flynn, Petitioner, testified that her mother resided on this property and wanted nothing more than to remain there until she passed away, which occurred in 1979. In 1980, Mrs. Flynn officially, through inheritance, became the legal owner of the site. She stated that due to the proximity of commercial use virtually surrounding the site, she considered it no longer suitable for a residence. This commercial use was presented in detail:

Along the north property line the subject site abuts a large Mobil gasoline station and a large B.L. zoned shopping center. To the west the subject site abuts a 2-1/2 story office building on land zoned R.O. This office building in turn abuts heavy commercial use along York Road. Across Gerard Avenue there are individual homes on land zoned D.R. 5.5. It should be noted, however, that the homes directly across Gerard Avenue front on Timonium Road with their rear yards on Gerard Avenue.

Mrs. Flynn testified that when she inherited the property in 1980 she was not familiar with zoning procedures and, therefore, this site was not made an issue in the 1980 comprehensive map process. She also noted the debris on the property associated with the shopping center, the lack of adequate screening, the heavy traffic, both on the streets and trucks,

The recent decision in Howard County v. Dorsey, 292 Md. 351, 438 A.2d 1339 (1982), is in point. There, the Petitioner contended the property unsuitable for residential development because "practically surrounded by industrial zoning classifications." He further contended that no reasonable use could be made because the approximately 15 acres of land zoned R-12 were "in a sea of hundreds and hundreds of acres of industrially zoned land." The Court of Appeals rejected both contentions. It found the allegation of unsuitability based on "industrial surroundings" not sufficiently strong or substantial to overcome the presumption of validity of comprehensive zoning. It further noted no evidence to show the Council was unaware of the readily visible physical characteristics and location of the subject property or failure to take them into account. The Court further rejected the confiscation argument, noting the existence of a single family residence presently on the property and the existence of single family development on property adjacent to the north.

In the present case, Petitioner's factual premise that her land is surrounded by offices and commerce is incorrect. Even if it were factually accurate, however, it would not be sufficient to support rezoning under Dorsey. Petitioner's contention regarding error is strikingly similar to that rejected in Dorsey, considering the continuation of single family dwellings utilization, and the substantial residential development on nearby property.

Petitioner's other primary thrust was to urge the theory that the requested R.O. zoning would provide an appropriate buffer between residential and commercial uses. The so-called "buffer" theory has been tried and rejected in many cases. See, for example, Dahl v. County Board of Appeals, 258 Md. 157, 265 A.2d 227 (1970), in which the Court stated,

"Hindsight might dictate that Riderwood-Lutherville Drive may have been a better choice for the boundary between M-L zone and the residential zone; however, this desirability falls far short of substantiating its adoption as error." 258 Md., at 164, 265 A.2d, at 231.

DORRIS S. FLYNN - #R-82-188

2.

etc., on the shopping center property, that she would prefer not to live there under these conditions and that she, in good conscience, could not offer it for sale as a viable residence.

Mr. George Gavrelis, a Planner, testified in support of Mrs. Flynn's petition. He also described in detail all the surrounding uses and agreed that residential use was no longer feasible. He testified that had this property been an issue on the 1980 comprehensive maps, it so nearly fits all of the R.O. zone requirements that it would have been proper to grant same.

Mr. James Hoswell, Baltimore County Planner, testified in support of the Planning Board's recommendation that the property be split and R.O. granted for the west portion, but that D.R. 5.5 be retained on the east portion. He agreed with all area descriptions previously presented. He testified that this was a difficult parcel to zone because of the existing homes in the area and the existing commercial uses, and would prefer that the site be dealt with comprehensively rather than by petition. This basically concluded testimony in this case.

Bill No. 13-80 created the R.O. zones. Section 203.2 states: "The R.O. zoning classification is established, pursuant to the findings stated above (Sections 203.1.A, 203.1.B and 203.1.C), to accommodate houses converted to office buildings and some small class B office buildings in predominately residential areas on sites that, because of adjacent commercial activity, heavy commercial traffic, or other, similar factors, can no longer reasonably be restricted solely to uses allowable in moderate density residential zones. [Emphasis added]. This property seems to match the intentions of Bill 13-80 perfectly. The encroachment of commercial usage surely removes some of the potential for residential use under today's accepted standards for residential use. The Board notes especially that R.O. zoning was granted for the property abutting on the west on the 1980 comprehensive map. It is unlikely to assume that had this site also been an issue at that time that it would have been denied. Section 2-58.1 J of the Baltimore County Code, 1980 Supplement, authorizes this Board to grant this requested reclassification if its present

Accordingly, upon close examination, it appears that Petitioner's contention of error is unfounded. Moreover, since Petitioner has not alleged a substantial change in the neighborhood, she has not satisfied the first element required for statutory reclassification under Section 2-58.1(j)(1). It therefore should not have been necessary for the Board to reach the second element, involving the issue of whether R.O. zoning is warranted by any error.

Moreover, despite its recognition of the strong presumption of correctness of comprehensive zoning, the County Board of Appeals stood the applicable legal standard on its head by assuming, without evidence, that the County Council was unaware of the readily visible physical characteristics, location, and neighborhood of the subject property and unaware of other facts pertinent to the reclassification. The Petitioner failed to testify before the Planning Board or the County Council to state any facts or reasons in support of the requested R.O. classification. This failure cannot legally be turned to the Petitioner's advantage by presuming the Council then to have been unaware of relevant facts or to have failed to take such facts into consideration. Therefore, the Board of Appeals' finding of error was based on a false premise.

Its Opinion reveals, therefore, that the Board arrogated unto itself the legislative role of judging the preferred zoning for the property. In so doing, the Board failed to adhere to the limitations which the law imposes on administrative bodies reviewing legislative decisions. Specifically, the Board opined that there ought to be a transition area between D.R. 5.5 and the commercial area to the north, and the residential use was unreasonable. But there was no evidence of any planning theory which requires R.O. zoning next to commercial (or prohibits D.R. 5.5), and no evidence that the single family homes could not continue to attract tenants.

DORRIS S. FLYNN - #R-82-188

3.

zoning is in error. The Board is of the opinion that the present zoning of D.R. 5.5 for this site is in fact in error and that the requested R.O. zoning would provide a reasonable use of the property, and would also provide a buffer area between the shopping center and the homes on Gerard Avenue, and will so order.

#### ORDER

For the reasons set forth in the foregoing Opinion, it is this 21st day of July, 1982, by the County Board of Appeals, ORDERED that the reclassification petitioned for from a D.R. 5.5 zone to an R.O. zone, be and the same is hereby GRANTED.

Any appeal from this decision must be in accordance with Rules 8-1 thru 8-12 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

William T. Hackett  
William T. Hackett, Chairman

Patricia Phipps

Keith S. Franz

#### CONCLUSION

For the foregoing reasons, the Order of the Board of Appeals dated July 21, 1982 should be reversed, and the within petition for reclassification denied.

John W. Hessian, III  
People's Counsel for Baltimore County

Peter Max Zimmerman  
Deputy People's Counsel  
Rm. 223, Court House  
Towson, Maryland 21204  
494-2188

I HEREBY CERTIFY that on this 25th day of September, 1982, a copy of the foregoing Appellant's Memorandum was mailed to R. Taylor McLean, Esquire, 100 W. Pennsylvania Avenue, Towson, Maryland 21204.

Peter Max Zimmerman  
Peter Max Zimmerman

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(301) 823-1900

October 20, 1982

Clerk  
Circuit Court  
For Baltimore County  
County Courts Building  
401 Bosley Avenue  
P.O. Box 6754  
Towson, Maryland 21204-0754

Re: In the Matter of the Application  
of Dorris S. Flynn for Rezoning  
of Property - Mts. File No. 82M244

Dear Sir:

Please file the enclosed Memorandum of Dorris S. Flynn in the above-referred to case.

Very truly yours,

R. Taylor McLean

RTMcLrjbb  
Enclosure

cc: John W. Hessian III, Esquire - Enc.  
Peter Max Zimmerman, Esquire - Enc.

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IN THE MATTER OF THE  
APPLICATION OF  
DORIS S. FLYNN  
FOR REZONING OF PROPERTY  
from D.R. 5.5 to R.O. Zone  
NW Corner Timonium Road  
and Gerard Avenue, 8th District  
Zoning Case No. R-82-188

IN THE  
CIRCUIT COURT  
FOR BALTIMORE COUNTY  
AT LAW  
Mis. file No. 82M244

MEMORANDUM OF PROPERTY OWNER, MRS. FLYNN  
(As Per Md. Rule B.12)

STATEMENT OF THE CASE

After inheriting the property from her 90 year old mother who died in 1980, Mrs. Flynn filed a petition to reclassify the property from its existing D.R. 5.5 zone to an RO zone, a newly enacted, residential office zone. Mrs. Flynn's mother took no part in the map adoption procedure which led up to the adoption of the comprehensive maps in 1980, and thus, the zoning of the site was not identified as a specific issue before either the Planning Board or the County Council during the preparation and processing of the 1980 map. Mrs. Flynn, herself, who lives principally in Florida, was unaware of the map adoption procedure. However, in August, 1981, shortly after the distribution of her mother's estate, Mrs. Flynn filed her petition to have the zoning of the property reclassified from the D.R. 5.5 residential 1 zone (which the 1980 map had continued from earlier comprehensive maps) to an RO zone, which was newly available at the time the 1980 map was adopted. This petition, based on error in the map, was comprehensively considered with all other petitions for reclassification under Baltimore County's cycle zoning procedure, and in due course came before the Planning Board of Baltimore County for its recommendation. That Board recommended that .9 acres of the 1.54 acre site be reclassified RO, but that the remainder of the tract remain D.R. 5.5. Thereafter, the petition came on for hearing before the Board of Appeals of Baltimore County, which found that continuance of the D.R. 5.5 zone on the 1980 map was error

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and that the RO zone fitted the property perfectly. (See p. 2 of the Board's Opinion.) Accordingly, the Board entered its Order dated July 21, 1982 reclassifying the property from a D.R. 5.5 to a RO zone. People's Counsel, who had provided the only opposition to the petition, entered this appeal to the Circuit Court for Baltimore County.

QUESTION PRESENTED

Did the administrative body, the Board of Appeals of Baltimore County, have evidence before it which made fairly debatable its reclassification of the property from a D.R. 5.5 zone to the newly enacted RO zone on the grounds of error?

APPLICABLE STATUTE AND ZONING REGULATION

1. Baltimore County Code (1979 Cum. Supp.) Section 2-58.1. Delegation to board of appeals of interim power to change zoning classification of property; method of interim zoning reclassification; method for early action on reclassification due to public interest or emergency.

A copy of this section is attached to this memorandum.

2. Baltimore County Zoning Regulations, Section 203 - Residential Office (RO) Zones.

A copy of this section is attached to this memorandum.

STATEMENT OF FACTS

The evidence before the Board of Appeals established that the subject property is surrounded by commercial and office building zones and uses but for its Gerard Avenue frontage. To the northeast next to the subject property on Timonium Road, there is a Mobile gas station. Along the entire northern border of the property is the large Timonium Shopping Center which extends to the York Road to the west. On the western border is a tract improved by a three-level office building, the Elliott Building, with a paved parking area covering the remainder of the tract. There was also evidence of heavy commercial uses nearby

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along the York Road at Gerard Avenue, including an auto glass installation business immediately next to the Elliott Building, several gas stations, a bar and a strip shopping center. Across Gerard Avenue from the subject property are the rears of several residences. (T. 21-24).

Also before the Board of Appeals was the uncontradicted evidence that the impact of the surrounding commercial and office uses on the residential use of the subject property was substantial, unique and detrimental. Among other things, Mrs. Flynn testified that beginning early in the morning, there was noise from the gas station from pneumatic tools and other equipment used in the changing of tires and the like; that dumpsters serving the nearby shopping center, (which included a triple movie theater, a chinese restaurant and a fish market, among many other uses), were bounced up and down late at night and beginning at 5:30 in the morning with such noise as to awaken her and her husband; that there were odors from the garbage, the chinese restaurant and the fish market; that chicken bones and other debris were regularly thrown onto her property resulting in a rat problem; that there was substantial nighttime traffic as well as during the day from the theaters and the restaurant which disturbed their use of the property. Mrs. Flynn also testified to other traffic and litter problems resulting from the nearby commercial uses and the Timonium race track. Mrs. Flynn testified that the property was not suitable for a residence, that it would not be proper to try to sell it for a residence and that she would not undertake to do so. (T. 10-15).

She explained that having recently inherited the property, she and her husband lived there a few months of the year "to maintain the place" (T. 14-15), their principal residence being in Florida (T. 9). She further explained that when her mother and father had bought the property in about 1941, it and the surrounding areas were rural in character and that her father having died some 15 years previously, her mother had held on to what had been for a long time her home until her death in 1980 at age 90 (T. 9, 10, 16).

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The Board also had before it the testimony of George Gavrelis. With an undergraduate degree from Harvard and a masters degree in planning in 1951 from the Harvard Graduate School of Design, Mr. Gavrelis was employed in the summer of 1951 by the Baltimore County Planning Commission which subsequently became the Planning Board and Office of Planning and Zoning. In 1973, he became the Director of Planning for Baltimore County. Before becoming the Director, he had been a department director extensively involved in planning and zoning matters from about 1957 (T. 17, 18).

His personal and official knowledge of the subject property went back to the mid fifties when he was actively concerned with plans for the extension of Timonium Road to Dulaney Valley Road. His own residence is "not too far away" and he does considerable shopping at the Timonium Shopping Center, patronizes the movie and restaurant and frequents other commercial establishments in the area (T. 19, 20). His description of the extensive commercial uses surrounding the subject property and in the general neighborhood was accepted as accurate by James Hoswell, a planner employed by Baltimore County who testified for People's Counsel (T. 56).

Mr. Gavrelis advised the Board that development in the shopping center to the north of the subject property has continued to be intensified. He told of the extension to a building near the subject property which is occupied by a dress shop, a frame shop, health food shop and the fish market "which brings that actual commercial building in much closer proximity, possibly removed by about 50 feet from the subject property." He pointed out that the triple movie theater and restaurant were much closer to the subject property than the plat exhibit (Petitioner's Exhibit No. 1) indicated. He also testified that Gerard Avenue itself had become a shortcut for vehicular traffic to avoid the Timonium and York Road intersection (T. 21, 22).

The Board also had before it Mr. Gavrelis' unequivocal testimony that the D.R. 5.5 zoning continued on the property by the 1980 map

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constituted error (T. 30). He testified to the failure of the comprehensive map to identify the circumstances of the subject property (T. 28), these circumstances being the unique impact (T. 41) of the surrounding commercial and office uses on the subject property such as "the noise, head-on parking, adjacency to either commercial or office uses, the lack of screening..." (T. 26-7) and as "the noise, the bustle, the odors, the lack of screening on the adjacent commercial or office properties, the relationship of that property to the rear yards of the residences across the street, relationship of that property to the Mobile gas station along Timonium Road" (T. 37). Mr. Gavrelis concluded that residential use, existing or potential was not feasible, reasonable, nor tenable on this property (see e.g., T. 27, 36).

In his opinion, the map was also in error because at the time of its adoption in 1980, the County Council failed to apply to the subject property the newly enacted and available RO (residential office) zone which provided a reasonable and feasible use of the property to perfection. As Mr. Gavrelis expressed it,

"The County had a perfect tool, if you will, with which to remedy, if you will, the land use conflicts which exist on this property."

It is my conclusion that this property is not reasonable for residential uses.

I believe it is perfectly suited for office usage within the context of the RO zone, knowing the legislative policy which created that RO zone recognized that there were circumstances where continued moderate residential development was no longer reasonable or feasible, and that the conversion of existing dwellings or even the erection of a new office structure, was a more rational way of dealing with the land use and zoning potentials on a property.

I believe that the subject property is suited to the RO use. It is not suited nor is it feasible or reasonable to expect that the residential use continue with respect to the existing development or the creation of a new residential lot on the balance of the property..." (T. 27-28)

Both Mr. Gavrelis and Mr. Hoswell for People's Counsel explained the comprehensive nature of the processing of a petition for reclassification under the Baltimore County law (T. 31-32, 47-48, 54-56).

In addition, Mr. Gavrelis testified to the extensive controls built

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into development under the RO zone (T. 28-30). On this point, he concluded,

"It is a responsible zone. I think it was designed uniquely to provide that buffering and transition that the map failed to make in 1980 relative to the subject property."

When asked whether he had "any objection" to Mr. Gavrelis' planning conclusions, Mr. Hoswell declined to use the word "objection" and substituted the phrase "perhaps, some hesitation" (T. 56). Later when asked whether he had any disagreement with Mr. Gavrelis' ultimate conclusions as to the best planning solution or use of the property, he said he was "about a 95% agreement with Mr. Gavrelis on the rear portion of the property." (T. 62). In responding to the Chairman of the Board of Appeals, Mr. Hoswell explained the Planning Board's recommendation that about two-thirds of the subject property be rezoned RO with his assumption that "they recognize an error in the zoning of the property." (T. 67)

There was testimony before the Board of Appeals that it was not sensible to grant RO zoning to only a portion of the subject property as the Planning Board had recommended. Mrs. Flynn herself pointed out that to do so would simply intensify the adverse impact of the surrounding commercial and office uses on the remainder of her tract which would continue D.R. 5.5 (T. 15). Mr. Gavrelis agreed, pointing out that the subject property constituted a single entity, and that one end would be as "equally impacted by the adverse relationships that exist" as the other. (T. 33).

ARGUMENT

The Reclassification by the Board of Appeals Being Supported by Substantial Evidence and at Least "Fairly Debatable", the Circuit Court Should Affirm the Board's Order

There are two major principles of law which when combined with the factual record of this case require the affirmance of the Board's decision to reclassify Mrs. Flynn's property.

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1. The scope or standard of judicial review of administrative decision-making in Maryland is narrow.

"The judicial branch of the government ordinarily may, through appeal, the writ of mandamus, by injunction, or otherwise, correct any abuse of discretion by administrative agencies, or review their actions when arbitrary, illegal, capricious or unreasonable. *Beaps v. Cobb*, supra, 185 Md. at 393; *Dickinson-Hidewater v. Supravisory*, supra, 273 Md. at 255; *Hoch v. Crook*, supra, 182 Md. at 280-81. However, the scope of judicial review of decisions by administrative agencies is narrow, recognizing that board members have expertise in a particular area and ordinarily should be free to exercise their discretion as such. *Flanney v. Halle*, 261 Md. 224, 216 A.2d 530 (1966). Accordingly, this Court adheres to the proposition that a reviewing court will not substitute its judgment for that of an administrative board where the issue is fairly debatable and the record contains substantial evidence supporting the administrative decision. *E.G., Mont. Co. v. Woodward & Lothrop*, 280 Md. 686, 376 A.2d 483 (1977), cert. denied sub nom. *Funger v. Montgomery Co.*, 343 U.S. 1067 (1978); *Agneslane, Inc. v. Lucas*, 247 Md. 612, 233 A.2d 757 (1967). See also *Heath v. M. & C.C. of Baltimore*, 187 Md. 296, 49 A.2d 799 (1946); *Oppenheimer, supra*, at 209." See *Annapolis v. Annapolis Waterfront Company*, 284 Md. 383, 395.

In *Eger v. Stone*, 253 Md. 533, 542, the Court of Appeals has defined the term "fairly debatable" as follows:

"We have made it quite clear that if the issue before the administrative body is 'fairly debatable', that is, that its determination involved testimony from which a reasonable man could come to different conclusions, the courts will not substitute their judgment for that of the administrative body, in the absence of an unconstitutional taking of private property for public use without the payment of just compensation..."

Or as our appellate courts have more simply put it,

"...the appellate court may not substitute its judgment for that of the zoning body and should affirm when the latter's decision is supported by substantial evidence." *Kanfer v. Montgomery County Council*, 35 Md.App. 715, 730 (1977); citing *Bosley v. Hospital For Consumptives*, 246 Md. 197, 204 (1967)

Thus, our Court of Appeals has noted that the courts should exercise restraint so as not to substitute their judgments for those of the administrative agency.

"Whether the test of substantial evidence on the entire record or the test of against the weight of all of the evidence is followed, the courts have exercised restraint so as not to substitute their judgments for that of the agency and not to choose between equally permissible inferences or make independent determinations of fact, because to do so would be exercising a non-judicial role. Rather, they

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have attempted to decide whether a reasoning mind could reasonably have reached the result the agency reached upon a fair consideration of the fact pictured painted by the entire record." *Board v. Oak Hill Farms*, 232 Md. 274, 283 (1963)

2. In addition to the standard of review discussed above, a second principal of law is important to this appeal, namely, that there is a strong presumption of the correctness of comprehensive rezoning. Consequently, the burden of proving mistake or change is a heavy one. *Stratakis v. Beauchamp*, 268 Md. 643, 652-3 (1973); *Boyce v. Sembly*, 25 Md.App. 43, 49-50 (1975); *Howard County v. Dorsey*, 292 Md. 351, 355 (1982).

In *Howard County v. Dorsey*, the administrative body (the County Council sitting as the Zoning Board) had before it the requested reclassification to a manufacturing zone of 3 acres of residentially zoned land out of a 15 acre residentially zoned tract. The County Council/Zoning Board refused to grant the reclassification in spite of substantial industrial use around the tract. The Board based the decision largely on a General Plan for Howard County which called for residential use of the property in support of a neighborhood school. 292 Md. at 354 and 359.

On appeal to the Circuit Court for Howard County and again to the Court of Special Appeals, both courts held that the reclassification should have been granted. However, upon a grant of certiorari, the Court of Appeals reinstated the ruling of the administrative body, noting, "...Where a legislative body, or a board of county officials, pursuant to authority conferred upon it, has granted a rezoning of property, the question on judicial review is whether or not such action is arbitrary and discriminatory or fairly debatable. We shall follow that test in considering this appeal." 292 Md. at p. 355 (quoting from an earlier opinion); and emphasizing the strong presumption of the correctness of the original zoning.

The presumption of validity is overcome and error established when there is precatory evidence to show that the Council was uninformed as to significant facts concerning the property. As the court put it in *Boyce v. Sembly*, 25 Md.App. 43, 50-51,

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"A perusal of cases, particularly those in which a finding of error was upheld, indicates that the presumption of validity accorded to a comprehensive zoning is overcome and error or mistake is established when there is probative evidence to show that the assumptions or premises relied upon by the Council at the time of the comprehensive rezoning were invalid. Error can be established by showing that at the time of the comprehensive zoning the Council failed to take into account then existing facts, or projects or trends which were reasonably foreseeable of fruition in the future, or that the Council's action was premised initially on a misapprehension."

Applying these legal principles to the instant case, we have (a) that combination of strong evidence of the unique and seriously detrimental impact of the surrounding commercial and office building uses on Mrs. Flynn's property, which was not called to the County Council's attention during the map adoption procedure, and (b) the acceptance of this strong testimony by the Board of Appeals in rendering its decision to grant the Petition for Reclassification. The rules are thus harmonized and together require the affirmation of the order of the Board of Appeals granting the reclassification. People's Counsel v. Williams, 45 Md.App. 617, 623-626 (1980).

Consider the evidence before the Board. This relatively small tract, 1.54 acres, was continued on the 1980 map D.R. 5.5 as it had been on previous maps. This was error. Immediately to the west, the Elliott Building was accorded the new RO zoning, but no issue was made as to Mrs. Flynn's property, the owner being 90 years of age and her daughter living in Florida with no knowledge of the map procedure. Thus, the unique and harsh impact of the surrounding properties on the residential use of Mrs. Flynn's property was not called to the County Council's attention and was not readily observable by the County Council. See Boyce v. Sembly, 25 Md.App. at p. 51, quoted above. The late night and early morning noise of the dumpsters, the early morning noise from the Mobile gas station, the odors, the debris, the rats, the noisy traffic became known to Mrs. Flynn and her husband in a most vivid and disagreeable way, but at the same time were not noticeable to others not attempting to live on the property.

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SUITE 600  
102 W. PENNSA AVE.  
TOWSON, MD. 21204  
823-1600

- 9 -

In addition, the new RO zone with its carefully crafted controls offered a perfect classification and use for the Flynn property. As the Board noted in its opinion,

"Bill No. 13-80 created the R.O. zones. Section 203.2 states: 'The R.O. zoning classification is established, pursuant to the findings stated above (Sections 203.1.A, 203.1.B and 203.1.C), to accommodate houses converted to office buildings and some small class B office buildings in predominately residential areas on sites that, because of adjacent commercial activity, heavy commercial traffic, or other, similar factors, can no longer reasonably be restricted solely to uses allowable in moderate density residential zones.'" (Emphasis added by Board).

In addition, under the Baltimore County law, Mrs. Flynn's Petition for Reclassification was not a peice meal act by the Board of Appeals. Rather, it was a part of the complex and comprehensive cycle zoning law procedure which provides thorough review of Mrs. Flynn's Petition in relation to all other petitions in the cycle. Under this system, when the issue came before the Planning Board of Baltimore County, that Board recommended that about two-thirds of the property be reclassified RO. This is strong evidence that if the property had been considered during the map adoption process, it would have been classified RO. Both Mr. Hessian and his witness, James Hoswell, indicated as much at the hearing before the Board of Appeals. Mr. Hessian felt there would be "a very persuasive case to be presented to the County Council in 1984..." (T. 6). Similarly, Mr. Hoswell responding as a planner was in about "95% agreement with Mr. Gavrelis on the rear portion of the property" (T. 62), and assumed that the Planning Board recognized "an error in the zoning of the property..." (T. 67).

Based on the ample and strong evidence of mistake in the 1980 map with respect to Mrs. Flynn's property, the Board of Appeals clearly had the right to order its reclassification to the admittedly well-suited RO zone. People's Counsel v. Williams, 45 Md.App. 617, 623-626 (1980).

#### CONCLUSION

Given the strength and substance of the evidence and its unique application to the subject property, it was at least "fairly debatable"

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823-1600

- 10 -

for the Board of Appeals to grant the reclassification. Accordingly, their decision doing so should be affirmed.

Respectfully submitted,

R. Taylor McLean  
Suite 600  
102 West Pennsylvania Avenue  
Towson, Maryland 21204

I HEREBY CERTIFY that on this 20th day of October, 1982, a copy of the foregoing Memorandum of Property Owner, Mrs. Flynn, was hand-delivered to John W. Hessian III, Esquire, People's Counsel for Baltimore County, and Peter Max Zimmerman, Esquire, Deputy People's Counsel, Room 223, Court House, Towson, Maryland 21204.

R. Taylor McLean

ROYSTON, MUELLER,  
MCLEAN & REID  
SUITE 600  
102 W. PENNSA AVE.  
TOWSON, MD. 21204  
823-1600

- 11 -

IN THE MATTER  
OF THE APPLICATION OF  
DORRIS S. FLYNN  
FOR REZONING OF PROPERTY  
FROM D.R. 5.5 to R.O. Zone  
NW corner Timonium Road  
and Gerard Avenue  
8th District

IN THE CIRCUIT COURT  
FOR BALTIMORE COUNTY  
AT LAW

Zoning Case No. R-82-188  
(Item 11, Cycle II)

Misc. Docket No. 14  
Folio No. 249  
File No. 82-M-244

#### PETITION ON APPEAL

The People's Counsel for Baltimore County, Protestant below and Appellant herein, in compliance with Maryland Rule B-2(e), files this Petition on Appeal setting forth the grounds upon which this Appeal is taken, viz:

1. The record failed to support a finding of error in the Comprehensive Zoning Map process. Baltimore County Code Section 2-58.1(J)(1).
2. The record failed to show that the prospective reclassification was warranted. Baltimore County Code Section 2-58.1(J)(2).
3. The decision of the County Board of Appeals to reclassify the subject property was arbitrary, capricious, and not based on substantial and legally competent evidence.
4. The County Council, in the course of the 1980 Comprehensive Rezoning process, placed an appropriate zoning reclassification on the subject property, and provided for it a reasonable use.
5. The Board of Appeals, in its finding of error, wrongfully substituted its judgment for that of the County Council.

WHEREFORE, Petitioner prays that the Order of the Board of Appeals dated July 21, 1982 be reversed, and the D.R. 5.5 zoning classification enacted by legislation be reinstated.

AND AS IN DUTY BOUND, etc.,

John W. Hessian, III  
People's Counsel for Baltimore County

- 2 -

Pete. Max Zimmerman  
Deputy People's Counsel  
Rm. 223, Court House  
Towson, Maryland 21204  
494-2188

I HEREBY CERTIFY that on this 16th day of August, 1982, a copy of the foregoing Petition on Appeal was delivered to the Administrative Secretary, County Board of Appeals, Rm. 200, Court House, Towson, Maryland 21204; and a copy was mailed to R. Taylor McLean, Esquire, 102 W. Pennsylvania Avenue, Towson, Maryland 21204.

John W. Hessian, III

Received: Edith T. Eisenhart  
Administrative Secretary,  
Board of Appeals of Baltimore County

IN THE MATTER  
OF THE APPLICATION OF  
DORRIS S. FLYNN  
FOR REZONING OF PROPERTY  
FROM D.R. 5.5 to R.O. Zone  
NW corner Timonium Road  
and Gerard Avenue  
8th District

IN THE CIRCUIT COURT  
FOR BALTIMORE COUNTY  
AT LAW

Misc. Docket No. \_\_\_\_\_  
Folio No. \_\_\_\_\_  
File No. \_\_\_\_\_

#### ORDER FOR APPEAL

MR. CLERK:

Please note an appeal to the Circuit Court for Baltimore County from the Opinion and Order of the County Board of Appeals of Baltimore County, under date of July 21, 1982, granting a zoning reclassification on the subject property from D.R. 5.5 to R.O. zone.

Peter Max Zimmerman  
Deputy People's Counsel

John W. Hessian, III  
People's Counsel for Baltimore County  
Rm. 223, Court House  
Towson, Maryland 21204  
494-2188

I HEREBY CERTIFY that a copy of the foregoing Order was delivered to the Administrative Secretary, County Board of Appeals, Rm. 200, Court House, Towson, Maryland 21204 on this 15th day of August, 1982; and a copy was mailed to R. Taylor McLean, Esquire, 102 W. Pennsylvania Avenue, Towson, Maryland 21204.

John W. Hessian, III

Received: Edith T. Eisenhart  
Administrative Secretary,  
Board of Appeals of Baltimore County

RECEIVED  
BALTIMORE COUNTY  
AUG 13 9 03 AM '82  
COURT HOUSE  
BY

IN THE MATTER  
OF THE APPLICATION OF  
DORRIS S. FLYNN  
FOR REZONING OF PROPERTY  
FROM D.R. 5.5 to R.O. Zone  
NW corner Timonium Road  
and Gerard Avenue  
8th District

IN THE  
CIRCUIT COURT  
FOR  
BALTIMORE COUNTY  
AT LAW

Zoning File No. R-82-188  
(Item 11, Cycle II)  
Misc. Docket No. 14  
Folio No. 249  
File No. 82-M-244

#### CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, William T. Hackett, Patricia Phipps, and Keith S. Franz, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, Dorris S. Flynn, 20 Gerard Avenue, Timonium, Md. 21093, Petitioner; R. Taylor McLean, Esq., 102 W. Pennsylvania Ave., Towson, Md. 21204, Counsel for the Petitioner; and John W. Hessian, Esq., Court House, Towson, Md. 21204, People's Counsel for Baltimore County, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

June Holmen  
County Board of Appeals of Baltimore County  
Rm. 200, Court House, Towson, Md. 21204  
Telephone 494-3180

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Dorris S. Flynn, 20 Gerard Ave., Timonium, Md. 21093, Petitioner; R. Taylor McLean, Esq., 102 W. Pennsylvania Ave., Towson, Md. 21204, Counsel for the Petitioner; and John W. Hessian, Esq., Court House, Towson, Md. 21204, People's Counsel for Baltimore County, on this 16th day of August, 1982.

June Holmen  
County Board of Appeals of Baltimore County

IN THE MATTER  
OF THE APPLICATION OF  
DORRIS S. FLYNN  
FOR REZONING OF PROPERTY  
FROM D.R. 5.5 to R.O. zone  
NW corner Timonium Road  
and Gerard Avenue  
8th District

IN THE  
CIRCUIT COURT  
FOR  
BALTIMORE COUNTY  
AT LAW

JOHN W. HESSIAN, ESQ.,  
PEOPLE'S COUNSEL FOR BALTIMORE  
COUNTY - APPELLANT  
Misc. Doc. No. 14  
Folio No. 249  
File No. 82-M-244

#### CERTIFIED COPIES OF PROCEEDINGS BEFORE BOARD OF APPEALS OF BALTIMORE COUNTY

#### TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come William T. Hackett, Patricia Phipps and Keith S. Franz, constituting the County Board of Appeals of Baltimore County, and in answer to the Order for Appeal directed against them in this case, herewith return the record of proceedings had in the above entitled matter consisting of the following certified copies or original papers on file in the office of the Board of Appeals of Baltimore County:

#### ENTRIES FROM DOCKET OF BOARD OF APPEALS OF BALTIMORE COUNTY

No. R-82-188  
August 31, 1981 Petition of Dorris S. Flynn for reclassification from DR 5.5 to R.O. zone, on property located on the northwest corner of Timonium Road and Gerard Avenue, 8th District, filed  
October 30, 1981 Comments of Baltimore County Zoning Advisory Committee - filed  
April 1, 1982 Certificate of Publication in newspaper - filed  
April 4, 1982 Certificate of Posting of property - filed  
April 21, 1982 At 10 a.m. hearing held on petition  
July 21, 1982 Order of the County Board of Appeals ordering that the reclassification petitioned for from a D.R. 5.5 to an R.O. zone, be and the same is hereby GRANTED.

RECEIVED  
BALTIMORE COUNTY  
AUG 13 9 03 AM '82  
COURT HOUSE  
BY

SEP 10 1982



Doris S. Flynn  
Zoning File No. R-82-188

2.

August 13, 1982 Order for Appeal filed in the Circuit Court for Baltimore County by John W. Hession, Esq., People's Counsel for Baltimore County

August 13, 1982 Petition to accompany Order for Appeal filed in the Circuit Court for Baltimore County

August 16, 1982 Certificate of Notice sent to all interested parties

September 7 Transcript of testimony filed - 1 volume

Petitioner's Exhibit No. 1 - 200 scale map, color coded

" " " 2 - Planning Board Recommendation

People's Counsel's Exhibit No. 1 (a to k) - Photos

September 9 Record of proceedings filed in the Circuit Ct. for Baltimore County

Record of proceedings pursuant to which said Order was entered

and said Board acted are permanent records of the Board of Appeals of Baltimore County, and your respondents respectively suggest that it would be inconvenient and inappropriate to file the same in this proceeding, but your respondents will produce any and all such rules and regulations whenever directed to do so by this Court.

Respectfully submitted,

*June Holmen*  
June Holmen  
County Board of Appeals of Baltimore County

cc: R. Taylor McLean, Esq.  
John W. Hession, III, Esq.

IN THE MATTER OF THE APPLICATION OF DORRIS S. FLYNN :  
v. :  
PEOPLE'S COUNSEL FOR BALTIMORE :  
COUNTY, et al. :  
Zoning Case No. R-82-188 :

IN THE CIRCUIT COURT :  
FOR BALTIMORE COUNTY :  
AT LAW :  
Misc. No. 82-M-244 :

ORDER FOR APPEAL

MR. CLERK:

Please enter an appeal on behalf of the People's Counsel for Baltimore County from the Opinion and Order of the Circuit Court for Baltimore County dated November 9, 1982, and forward all papers in connection with said case to the Clerk of the Court of Special Appeals of Maryland in accordance with the Maryland Rules.

*John W. Hession III*  
John W. Hession, III  
People's Counsel for Baltimore County

*Peter Max Zimmerman*  
Peter Max Zimmerman  
Deputy People's Counsel  
Rm. 223, Court House  
Towson, Maryland 21204  
494-2188

RECEIVED  
BALTIMORE COUNTY  
Dec 9 3 51 PM '82  
CLERK OF PEALS  
BY: [initials]

I HEREBY CERTIFY that on the 6th day of December, 1982, a copy of the foregoing Order for Appeal was mailed to R. Taylor McLean, Esquire, 102 W. Pennsylvania Avenue, Towson, Maryland 21204.

*Peter Max Zimmerman*  
Peter Max Zimmerman

County Board of Appeals

Room 219, Court House  
Towson, Maryland 21204  
August 16, 1982

John W. Hession, Esq.  
People's Counsel for Balto. County  
Court House  
Towson, Md. 21204

Doris Flynn  
Re: Case No. R-82-188

Dear Mr. Hession:

In accordance with Rule B-7 (a) of the Rules of Procedure of the Court of Appeals of Maryland, the County Board of Appeals is required to submit the record of proceedings of the zoning appeal which you have taken to the Circuit Court for Baltimore County in the above matter within thirty days.

The cost of the transcript of the record must be paid by you. Certified copies of any other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court not later than thirty days from the date of any petition you might file in court, in accordance with Rule B-7 (a).

Enclosed is a copy of the Certificate of Notice; also invoice covering the cost of certified copies of necessary documents.

Very truly yours,

*June Holmen*  
June Holmen, Secretary

Encls.

494-3180

County Board of Appeals

Room 219, Court House  
Towson, Maryland 21204  
August 16, 1982

R. Taylor McLean, Esq.  
102 W. Pennsylvania Ave.  
Towson, Md. 21204

Re: Case No. R-82-188  
Doris S. Flynn

Dear Mr. McLean:

Notice is hereby given, in accordance with the Rules of Procedure of the Court of Appeals of Maryland, that an appeal has been taken to the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

*June Holmen*  
June Holmen, Secretary

Encl.  
cc: Ms. Dorris S. Flynn  
W. E. Hammond  
J. E. Dyer  
N. E. Garber  
J. G. Howell  
Board of Education

September 9, 1982  
Received from County Board of Appeals of Baltimore County Case # 82-M-244, Misc. 14, and Folio 249.  
Certified copies of Proceedings and Transcript of Record.

*J. T. Oates*

In The Matter of the Application of  
Doris S. Flynn for Rezoning

IN THE CIRCUIT COURT

FOR

Vs.  
County Board of Appeals

BALTIMORE COUNTY

Docket 14 Folio 249

Case No. 82-M-244

NOTICE OF FILING OF RECORD

TO: R. Taylor McLean John W. Hession, III June Holmen  
102 W. Pennsylvania Ave. Rm. 200, Courthouse  
Towson, Md. 21204 Towson, Md. 21204

In accordance with Maryland Rule of Procedure B12, you are notified that the record in the above entitled case was filed on September 9, 1982.

*Elmer H. Holling Jr.*  
Clerk

RECEIVED  
BALTIMORE COUNTY  
SEP 10 11 07 AM '82  
CLERK OF PEALS  
BY: [initials]

FILED SEP 9 1982

RE: R-82-M-244 - In the matter of the application of Doris S. Flynn for the people's counsel for Baltimore Co., et. al.  
HEARING DATE: Wednesday, Sep. 9, 1982, @ 9:30 a.m.  
ON THE FOLLOWING: Appeals 3 items

TO: R. Taylor McLean, Esq.  
John W. Hession, III, Esq.  
Peter Max Zimmerman, Esq.  
June Holmen, Esq.

CIRCUIT COURT FOR BALTIMORE COUNTY

ASSIGNMENT OFFICE  
COUNTY COURTS BUILDING  
401 Bailey Avenue  
P.O. Box 6754  
Towson, Maryland 21204-0754  
Oct. 1, 1982.

Sandy Caridis - 494-2869  
Assignment - Jury - Motions  
Frankie Grove  
Assignment Clerk 11:30  
Irene Summers - 494-2881  
Assignment - Jury - Motions  
Marta Erickson  
Assignment Clerk 11:30

RECEIVED  
BALTIMORE COUNTY  
OCT 4 11 42 AM '82  
CLERK OF PEALS  
BY: [initials]

494-3180

County Board of Appeals

Room 219, Court House  
Towson, Maryland 21204  
July 21, 1982

R. Taylor McLean, Esquire  
102 W. Pennsylvania Avenue  
Towson, Maryland 21204

Re: Case No. R-82-188  
Doris S. Flynn

Dear Mr. McLean:

Enclosed herewith is a copy of the Opinion and Order passed today by the County Board of Appeals in the above entitled case.

Very truly yours,

*Edith T. Eisenhart*  
Edith T. Eisenhart, Adm. Secretary

Encl.  
cc: Dorris S. Flynn  
Mr. W. E. Hammond  
Mr. J. E. Dyer  
Mr. N. E. Garber  
Mr. J. G. Howell  
Board of Education  
John W. Hession, III, Esq.



203.1 - Declaration of Findings. It is found:

- A. That residential use of certain sites may not be economically feasible in some predominantly moderate-density residential areas that are within or near town centers, are near C.C.C. districts, or lie along commercial motorways; [Bill No. 13-80]
- B. That neither business zoning nor high-density residential zoning of those sites is appropriate; and [Bill No. 13-80]
- C. That, with appropriate restrictions, houses converted to offices and, in some cases, small Class B office buildings and similar buildings are suitable, economically feasible uses of such sites. [Bill No. 13-80]

203.2 - Statement of Legislative Policy. The R-O zoning classification is established, pursuant to the findings stated above, to accommodate houses converted to office buildings and some small Class B office buildings in predominantly residential areas on sites that, because of adjacent commercial activity, heavy commercial traffic, or other, similar factors, can no longer reasonably be restricted solely to uses allowable in moderate-density residential zones. It is intended that buildings and uses in R-O zones shall be highly compatible with the present or prospective uses of nearby residential property. It is not the R-O classification's purpose to accommodate a substantial part of the demand for office space, it being the intent of these Zoning Regulations that office-space demand should be met primarily in C.T. districts, C.C.C. districts, and, to a lesser extent, in other commercial areas. [Bill No. 13-80]

203.3 - Use Regulations.

A. Uses Permitted as of Right. The following uses, only, are permitted as of right in any R-O zone: [Bill Nos. 13-80; 167-80]

1. Uses permitted as of right and as limited in D.R. 5.5 zones or
2. Class A office buildings and their accessory uses including parking [Bill Nos. 13-80; 167-80]

B. Uses Permitted by Special Exception. The following uses, only, may be permitted by special exception in an R-O zone:

1. Uses permitted by special exception and as limited in D.R. 5.5 zones or
2. Class B office buildings [Bill Nos. 13-80; 167-80]

<sup>1</sup> Veterinarians' offices included in this section as permitted uses in Bill No. 13-80 and deleted by Bill No. 167-80.

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The development plan may show the location of a precise building envelope in lieu of the precise location of a building; may show precise maximums and minimums in lieu of fixed values; may set forth lists (reasonably limited) of precisely described possible uses of a given space, in lieu of specifying a single use; and may otherwise reasonably allow for flexibility or alternatives, provided that appropriate precise limits are set forth. [Bill No. 13-80]

B. Procedures and Requirements

1. Before submitting a permit application for use or development of a property in an R-O Zone, the applicant shall submit a preliminary development plan to the Office of Planning and Zoning for review by the Director as to suitability for official submission. The Director may establish reasonable requirements for the form or number of prints to be submitted. [Bill No. 13-80]
2. The Planning Board shall approve or disapprove the plan within 90 days after the plan is presented to it. If the Planning Board disapproves the plan, it shall submit the reasons for disapproval, in writing within 10 days, to the applicant. [Bill No. 13-80]
3. Any amendment to an approved development plan shall be submitted for approval in accordance with the requirements for approval of the original plan set forth in this paragraph. [Bill No. 13-80]

C. Considerations in Planning Board Review. In reviewing the development plan for a property in an R-O zone, the Planning Board shall consider whether it would achieve compatibility of the proposed development with surrounding uses; tree preservation; protection of water-courses and bodies of water from erosion and siltation; safety, convenience, and amenity for the neighborhood; and other purposes of these Regulations. If the Board finds that the plan is inconsistent with these purposes, it shall disapprove the plan. [Bill No. 13-80]

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repealed and the rules of practice and procedure adopted by said board on April 2, 1979, are hereby approved by the county council to take effect April 2, 1979, and are hereby incorporated in Appendix C of this Code. (Bill No. 108, 1965; Balto. Co. Code, 1968, § 2-40; Bill No. 59, 1979, § 1)

Sec. 2-58.1. Delegation to board of appeals of interim power to change zoning classification of property; method of interim zoning reclassification; method for early action on reclassification due to public interest or emergency.

(a) The board of appeals shall have the power to make a change as to the district, division or zone within which a particular piece of property is classified (zoning reclassification) as hereinafter provided. As used in this section, the term "use" includes development, except where otherwise indicated by the context.

(b) A petition for a zoning reclassification of a property (reclassification petition) may be filed with the board of appeals only by the legal owner of such property, or by his legally authorized representative. Except for those petitions filed prior to April 16, 1979 each such petition shall be filed no later than forty-five (45) days prior to the beginning of the next succeeding cycle and shall include an explanation of the reasons why, in the petitioner's opinion, the reclassification sought should be made, set forth in sufficient detail to properly advise the county authorities required to review the petition. Any allegations of change in conditions as justification for the action sought shall be supported in the petition by precise description of such change, and any allegation of error shall be so supported in similar detail and as further required by subsection (j) of this section. No such petition may be accepted for filing unless it meets the board of appeals rules of practice and procedure, except that the petitioner may choose to submit plans that do not show any proposed use of the property under petition, regardless of any requirement in those rules to the contrary (see also subsection (i)).

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(c) For the purpose of considering contemporaneous zoning reclassification petitions in relation to each other and according to a standard schedule, the following semiannually recurring schedule periods are hereby established, to be applicable on and after April 16, 1979, subject to provisions hereinafter set forth:

April-October Cycle	October-April Cycle
Period I April 16-May 31	Period I April 16-May 31 and October 16-November 30
Period II June 1-July 31	Period II June 1-July 31 and December 1-January 31
Period III August	Period III August and February
Period IV September 1-December 31	Period IV September 1-December 31 and March 1-June 30

(d) With the exception of those reclassification petitions exempted under the procedure set forth in subsection (i) of this section, copies of all zoning reclassification petitions accepted for filing by the board of appeals shall be transmitted within five (5) days after receipt to the office of the zoning commissioner, who shall make the facilities and staff of his office available to the board of appeals for the purpose of:

- (1) Reviewing all such petitions for compliance with applicable statutes and regulations;
- (2) Preparing the appropriate advertisements;
- (3) Causing said advertisements to be published; and
- (4) Posting the individual properties involved in the cycle; as all as required by this section and rules of practice and procedure of the board of appeals. No later than five (5) days prior to Period I of the following cycle, the petition and appropriate comments shall be transmitted by the office of the zoning commissioner to the board of appeals. The board of appeals shall transmit the petition and comments to the director of planning and zoning within the first five (5) days of Period I of the following cycle. Within fifteen (15) days thereafter, the director of planning and the board of appeals shall publish a listing of all such petitions, together with a map showing the locations of all properties under petition, in

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two (2) newspapers of general circulation in the county for a period of at least two (2) weeks. They also shall make such listing and map available in the form of a press release and, for a period of at least three (3) weeks, shall publicly display a copy of such listing and map in the county office building or other appropriate place for public inspection.

(e) During each Period I, the director of planning and zoning shall review the petitions transmitted to him by the board of appeals and shall submit to the planning board and publish a report thereon containing at least the following information:

- (1) Maps showing properties under petition and the reclassifications sought therefor; such maps may also identify groups of such properties located close to each other, and show other indications of the interrelation of petitions with respect to planning considerations.
- (2) Recommendations on the petitions.
- (3) Supporting data for the recommendations, including any pertinent data and recommendations submitted by other county agencies.
- (4) Recommendations for scheduling of all hearings (to be held during the next Period IV), prepared in consultation with the board of appeals.
- (f) During each Period II, the planning board shall:
- (1) Publish and submit to the board of appeals a report on all the reclassification petitions submitted during the preceding filing period except those exempted under subsection (i), such report to contain the planning board's recommendations on such petitions, appropriate maps, and supporting data.
- (2) Submit to the board of appeals a recommended schedule for its hearings on the petitions, so arranged that hearings on related petitions shall, with the petitioners' consent, be combined, and/or shall be held successively.

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ation in the county for a period of at least two (2) weeks. They also shall make such listing and map available in the form of a press release and, for a period of at least three (3) weeks, shall publicly display a copy of such listing and map in the county office building or other appropriate place for public inspection.

tor of planning and zoning to him by the board of appeals and shall submit to the planning board and publish the following information:

- (1) Maps showing properties under petition and the reclassifications sought therefor; such maps may also identify groups of such properties located close to each other, and show other indications of the interrelation of petitions with respect to planning considerations.
- (2) Recommendations on the petitions.
- (3) Supporting data for the recommendations, including any pertinent data and recommendations submitted by other county agencies.
- (4) Recommendations for scheduling of all hearings (to be held during the next Period IV), prepared in consultation with the board of appeals.
- (f) During each Period II, the planning board shall:
- (1) Publish and submit to the board of appeals a report on all the reclassification petitions submitted during the preceding filing period except those exempted under subsection (i), such report to contain the planning board's recommendations on such petitions, appropriate maps, and supporting data.
- (2) Submit to the board of appeals a recommended schedule for its hearings on the petitions, so arranged that hearings on related petitions shall, with the petitioners' consent, be combined, and/or shall be held successively.

MICROFILMED

(g) During each Period III, the board of appeals shall establish its schedule for hearings on petitions reported upon by the planning board during the preceding Period II, considering the schedule recommended by the planning board. The board of appeals with the assistance of the office of planning and zoning shall publish its entire schedule of hearings in at least two (2) newspapers of general circulation in the county within the first fifteen (15) days of such period, together with a map showing the locations of all properties under petition. For a period of at least fifteen (15) days prior to the time of such hearing, each property shall be conspicuously posted with notice of the time and place of the hearing on the petition relating thereto; and individual notice thereof shall also be given in two (2) newspapers of general circulation in the county for the period in which on-premises posting is required.

(h) The board of appeals, during each Period IV, shall hold the hearings scheduled pursuant to subsection (g) of this section, subject to such postponement or continuation as circumstances may require.

(i) In any case where the planning board certifies to the county council that early action upon a zoning reclassification petition is manifestly required in the public interest or because of emergency, and the county council by an affirmative vote approves said certification, such petition shall be exempted from the regular, cyclical procedure of subsections (c) through (h) of this section, and also from the suspension of reclassification-petition filing required under section 2-58.2 of this article. For any such petition, the board of appeals shall schedule a public hearing for a date not less than thirty (30) nor more than ninety (90) days after the county council's approval of the planning board's certification. For a period of at least fifteen (15) days prior to the time of such hearing, notice of the time and place of the hearing relating to the property under petition shall be conspicuously posted thereon and shall be given in at least two (2) newspapers of general circulation in the county. Such notice shall describe the property under petition and the action requested therein. Within five (5) days after receipt of such a petition, the board of appeals

shall forward a copy of such petition to the office of the zoning commissioner and the director of planning or his deputy for consideration and written report thereon containing their findings thereon with regard to compliance with zoning regulations and planning factors.

(j) Before any property is reclassified pursuant to this section, the board of appeals must find:

- (1) That there has occurred a substantial change in the character of the neighborhood in which the property is located since the property was last classified, or that the last classification of the property was established in error; and
- (2) That the prospective reclassification of the property is warranted by that change or error. Any finding of any such change or error and any finding that the prospective reclassification is warranted may be made only upon consideration of factors relating to the purposes of the zoning regulations and maps, including, but not limited to, all of the following: Population trends; availability and adequacy of present and proposed transportation facilities, water-supply facilities, sewerage, solid-waste-disposal facilities, schools, recreational facilities, and other public facilities; compatibility of uses generally allowable under the prospective classification with the present and projected development or character of the surrounding area; any pertinent recommendation of the planning board or office of planning and zoning; and consistency of the current and prospective classifications with the master plan, the county plan for sewerage and water-supply facilities, and the capital program.

(k) No zoning reclassification of property shall, for a period of one (1) year after a zoning map applicable thereto may by an ordinance of the county council have been adopted, be granted on the ground that the character of the neighborhood has changed.

MICROFILMED

ion to the office of the zoning commissioner and the director of planning or his deputy for consideration and written report thereon containing their findings thereon with regard to compliance with zoning regulations and planning factors.

classified pursuant to this section, the board of appeals must find:

- (1) That there has occurred a substantial change in the character of the neighborhood in which the property is located since the property was last classified, or that the last classification of the property was established in error; and
- (2) That the prospective reclassification of the property is warranted by that change or error. Any finding of any such change or error and any finding that the prospective reclassification is warranted may be made only upon consideration of factors relating to the purposes of the zoning regulations and maps, including, but not limited to, all of the following: Population trends; availability and adequacy of present and proposed transportation facilities, water-supply facilities, sewerage, solid-waste-disposal facilities, schools, recreational facilities, and other public facilities; compatibility of uses generally allowable under the prospective classification with the present and projected development or character of the surrounding area; any pertinent recommendation of the planning board or office of planning and zoning; and consistency of the current and prospective classifications with the master plan, the county plan for sewerage and water-supply facilities, and the capital program.

(k) No zoning reclassification of property shall, for a period of one (1) year after a zoning map applicable thereto may by an ordinance of the county council have been adopted, be granted on the ground that the character of the neighborhood has changed.

(j) If a zoning reclassification petition includes documentation relating to the proposed use of the property under petition, that documentation must include:

- (1) Elevation drawings and a plan satisfying the zoning commissioner's rules of practice and procedure and showing locations, coverage, floor areas, heights, character, and exterior materials of all proposed structures and all existing structures to be removed; signs visible outdoors; all principal uses; hours of operation, maximum number of employees, and maximum levels of emanations (including sound and other vibrations, dust, odors, gases, light and heat); parking and loading facilities; existing and proposed public and quasi-public facilities on and adjacent to the site, including stormdrain systems, waterlines, sewerage, streets and drives, and railroad sidings; existing ponds and other bodies of water, water-courses, 100-year floodplains, major vegetations, and unusual natural formations, and proposed changes with respect to any of these; screening and landscaping; and existing topography and proposed major changes in grade; and
- (2) An environmental impact statement, as defined in the Baltimore County Zoning Regulations, that concerns the proposed use of the property under petition and that has been competently prepared by a professional planner or engineer of appropriate qualifications.

A plan submitted pursuant to this subsection may show the location of a precise building envelope (a clearly delimited area within which a building is to be entirely located but which is larger than the area covered by the building itself) in lieu of the precise location of a building; may show precise maximums and minimums in lieu of fixed values; may set forth lists of precisely described possible uses of a given space, in lieu of specifying a single use; and may otherwise reasonably allow for flexibility or alternatives, provided that appropriate precise limits are set forth.

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(m) A zoning reclassification petition, (including any documentation relating to the proposed use of the property under petition) may be amended only during a required public hearing proceeding on the petition. When a proposed amendment to such a petition is introduced, the hearing proceeding shall immediately be suspended and, within two (2) business days thereafter, the hearing authority shall transmit a copy of the proposal to the director of planning, who shall then promptly transmit copies to the members of the planning board. The director of planning shall also promptly refer the amendment to the office of the zoning commissioner and any other agency that he considers, upon reviewing files on the petition, to have an interest therein, together with a request that the agency provide him with comments on the amendment for distribution to the planning board, by a time he shall specify. Within forty-five (45) days after the copy of the amendments has been transmitted to the director of planning, the planning board shall adopt and transmit to the hearing authority a resolution embodying a report on the amendment. Any documentation that relates to the proposed use of the property upon petition and that is submitted by the petitioner or his authorized agent after the first public newspaper advertisement of the filing of the petition as required in Period I shall be considered an amendment to the petition, whether or not documentation of that nature was included within the original petition, and shall be subject to the provisions of subsection (l) as well as this subsection.

(n) Property may be reclassified under this section only upon making the findings required under subsection (j) of this section. Property may not be reclassified solely on the basis of documentation relating to the property's proposed use. However, any provision of section 22-20 to the contrary notwithstanding, if the petition to reclassify the property does include such documentation and is granted, the property may be used only in accordance with the plan included within that documentation; the zoning classification of any such property will revert to the previous classification unless, within three (3) years after the date of the final order granting the petition,

tion (including any documents of the property under use of the property under use) a required public hearing on a proposed amendment to a proceeding shall limit two (2) business days all transmit a copy of the , who shall then promptly the planning board. The director refer the amendment to her and any other agencies on the petition, to have request that the agency amendment for distribute he shall specify. Within of the amendments has planning, the planning hearing authority a recommendation. Any documentation of the property upon petitioner or his authorized advertisement of the period I shall be considered or not documentation the original petition, and subsection (1) as well as

under this section only  
 subsection (j) of this  
 referred solely on the basis  
 ty's proposed use. How-  
 to the contrary notwith-  
 the property does include  
 he property may be used  
 luded within that docu-  
 f any such property will  
 unless, within three (3)  
 r granting the petition,

"the prop-ty is being used in accordance with the plan or, in a case where development is necessary to implement the plan, unless the development either is completed or has been substantially undertaken and is being diligently pursued to completion. The requirement that such a property be utilized in accordance with a plan, and the provision that otherwise the classification of the prop-erty will revert, will not be affected by the subsequent enactment of a zoning map, pursuant to section 22-22 or 22-23 of this Code unless the zone classification of the property is further changed by that map.

(c) In its hearing on any zoning reclassification petition, the county board of appeals shall consider in evidence without testimony thereto, absent objection by any party to the case, any report of the planning board or comments from the director of planning and zoning or other officer of the office of planning and zoning relating to the petition or any duly submitted relevant report or comments from any other county agency. If an objection is made by any party to the case, the item shall be entered by testimony of a proper witness, who shall be notified by the board of appeals.

(p) The Board of appeals, subject to the appropriate principles, standards, rules, conditions and safeguards as set forth in the zoning regulations, shall have original jurisdiction for the purpose of hearing and deciding petitions for special exceptions and/or variances the granting of which is dependent upon the reclassification of the property involved in the petition for reclassification. Such special exceptions and variances shall be advertised and posted in accordance with the procedures provided in this section for advertising and posting reclassification petitions.

(q) Any petition for reclassification pending before the zoning commissioner of Baltimore County on the effective date of this section shall be transferred by said zoning commissioner to the board of appeals within ten (10) days after said effective date. The board of appeals shall hear these petitions within ninety (90) days of receipt from the zoning commissioner; and for a period of at least fifteen (15) days prior to

the time of such hearing, in accordance with the rules of practice and procedure duly adopted by the board for the hearing of petitions for reclassification. Each property shall be conspicuously posted with notice of the time and place of the hearing on the petition relating thereto, and individual notice thereof shall also be given in two (2) newspapers of general circulation in the county for the period in which on-premises posting is required. Further, the petitions referred to in this subsection shall be deemed to have complied with subsections (a) through (g) of this section. (Bill No. 46, 1979, § 1)

**Sec. 2-58.2. Suspension of reclassification petition filing during preparation of new or revised zoning map.**

No reclassification petitions other than those exempted under subsection (i) of section 2-58.1 shall be received for filing by the board of appeals during the following periods of time:

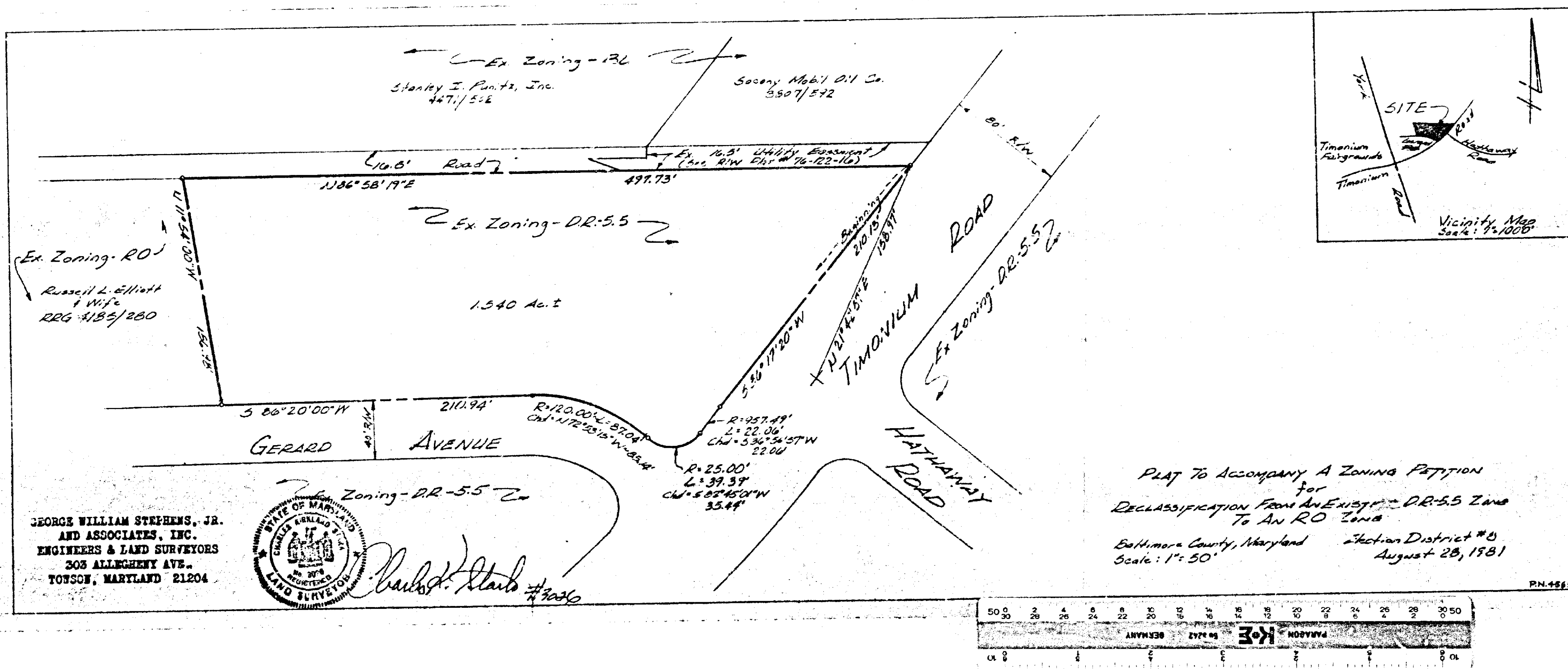
April 16, 1979, through October 15, 1982, and all like periods beginning on April 16, 1983, and every fourth year thereafter.

Any request for zoning reclassification may be presented at the appropriate time of the planning board or county council during such a period, however, for consideration in the preparation or modification of the new or comprehensively revised zoning map then to be approved and adopted. The purpose of this section shall be to provide for the orderly nonduplicative consideration of reclassification requests within the context of a comprehensive zoning map, when such map is under review. (Bill No. 46, 1979, § 1)

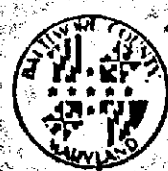
#### DIVISION 4. ECONOMIC DEVELOPMENT COMMISSION

**Sec. 2-59. Established.**

There is hereby established in the office of the county executive in the executive branch of the county a commission to be known as the economic development commission of Baltimore County. (Bill No. 161, 1979, § 1)







BALTIMORE COUNTY  
FIRE DEPARTMENT  
TOWSON, MARYLAND 21204  
825-7310

PAUL H. RENCKE  
CHIEF

October 9, 1981

Mr. William Hammond cc: William Hackett  
Zoning Commissioner Chairman of Board of Appeals  
Office of Planning and Zoning  
Baltimore County Office Building  
Towson, Maryland 21204

Attention: Nick Commodari, Chairman  
Zoning Plans Advisory Committee

RE: Property Owner: Dorris S. Flynn

Location: NW/Corner Timonium Road and Gerard Avenue

Item No.: 11 Zoning Agenda: Meeting of September 14, 1981

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

( ) 1. Fire hydrants for the referenced property are required and shall be located at intervals of \_\_\_\_\_ feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.

( ) 2. A second means of vehicle access is required for the site.

( ) 3. The vehicle dead end condition shown at \_\_\_\_\_

EXCEEDS the maximum allowed by the Fire Department.

( ) 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

(X) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1976 Edition prior to occupancy.

( ) 6. Site plans are approved, as drawn.

( ) 7. The Fire Prevention Bureau has no comments at this time.

REVIEWED: *Paul H. Rencke* 10/13/81 Approved: *George M. Negandl*  
Planning Group Fire Prevention Bureau  
Special Inspection Division

JK /mbj/cm

# BALTIMORE COUNTY, MARYLAND

## INTER-OFFICE CORRESPONDENCE

TO: William Hackett-Chairman  
Board of Appeals Date: September 23, 1981  
CC: Nick Commodari  
FROM: Charles E. Burnham  
Cycle 11 - 1981  
SUBJECT: Item #11 Zoning Advisory Committee Meeting 9-14-81

Property Owner: Dorris S. Flynn  
Location: NW/Corner Timonium Road and Gerard Avenue  
Existing Zoning: D.R. 5.5  
Proposed Zoning: R-0

Acreage: 1.540  
District: 8th

In conversion of dwelling "Use Group R-3 to office use group "B". Section 202 of the Baltimore County Building Code, Section 105.2 requires certain improvements to be made to upgrade the structure to the proposed commercial useage.

A change of occupancy permit and an alteration permit are required. Plans showing how the structure will be made to comply with the new code requirements as well as the Section 05.01.07 Code of Maryland Regulations (Handicapped Code) shall be submitted along with a permit application before a permit can be issued. The structure shall not be occupied as a new use group until the alterations are complete and an occupancy permit is issued.

*Charles E. Burnham*  
Charles E. Burnham  
Plans Review Chief

CEB:rrfj

# BALTIMORE COUNTY PUBLIC SCHOOLS

Robert Y. Dubel, Superintendent

Towson, Maryland - 21204

Date: 9/22/81

Mr. Walter Reiter  
Chairman, Board of Appeals  
Baltimore County Office Building  
1111 West Chesapeake Avenue  
Towson, Maryland 21204

Zoning Cycle #11 - 1981  
Meeting of 9/14/81

RE: Item No: 11  
Property Owner: Dorris S. Flynn  
Location: NW/Corner Timonium Road and Gerard Avenue  
Present Zoning: D.R. 5.5  
Proposed Zoning: R-0  
Acreage: 1.540

## School Situation

School	Enrollment	Capacity	Over/Under
--------	------------	----------	------------

Comments: Would not result in an increase in student population and would not have an adverse effect on the educational system.

## Student Yield With:

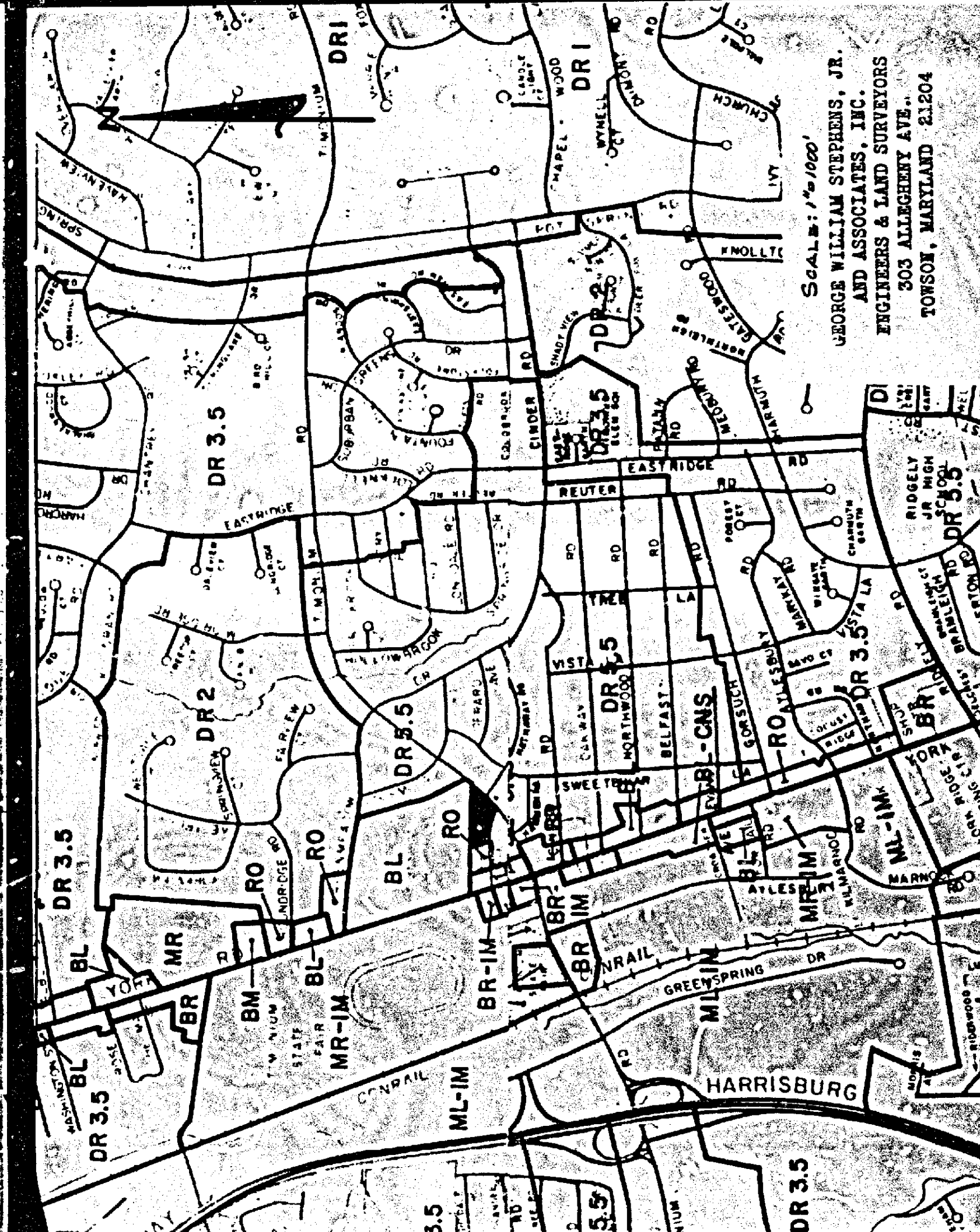
Elementary  
Junior High  
Senior High

Existing Zoning And Proposed Zoning

Very truly yours,

*Wm. Nick Petrovich*  
Wm. Nick Petrovich, Assistant  
Department of Planning

WNP/bp



494-3180

## County Board of Appeals

Room 219, Court House  
Towson, Maryland 21204  
February 26, 1982

R. Taylor McLean, Esquire  
102 W. Pennsylvania Ave.  
Towson, Md. 21204

Re: Item #11, Case #R-82-188  
Cycle 11, Dorris S. Flynn

Dear Mr. McLean:

Your case has been assigned for hearing before the Board during the normal cycle period for reclassification petitions. Written and public notice of the date of the hearing has either been given or is in the process of publication.

The Board has been informed that there are presently pending in the Circuit Court for Baltimore County three separate suits, all of which directly question the validity of the adoption of the 1980 comprehensive zoning map by the County Council of Baltimore County. The suits to which we refer are:

Home Builders Assn. of Md., Inc., et al. v. Baltimore County, Md., et al - Circuit Court Equity #107047

Isaac A. Jones v. Baltimore County, Md., et al - Circuit Court Equity #108029

Shops Reisterstown Associates, et al v. Baltimore County, Md., et al - Circuit Court Equity #107318.

The Board, of course, is not involved in those suits and consequently will not be asked to express any opinion on the enactment question. However, we are concerned that the parties to the pending reclassification cases be made aware that there will probably be a judicial decision on the question sometime in the future, and if the Circuit Court should find that the maps were, in fact, improperly enacted, and that decision is affirmed by an appellate court, the various parties to reclassification cases might then be placed in the position of having expended time and money in the preparation and trial of their cases based on the comprehensive map which legally might not exist. The Board has, therefore, determined that it will afford each of the petitioners in the pending reclassification cases the opportunity to review the pending Circuit Court cases and make their individual determination as to whether they wish to proceed at this time to fully try their reclassification case or whether they would prefer not to take that risk and ask the Board for a continuance of their case without hearing until such time as there has been a definitive ruling by the courts on the question of the validity of the 1980 maps.

Page Two

Since there must be some limit to the period of time within which a decision should be made and communicated to the Board, it has been decided that all requests for postponement made pursuant hereto must be delivered in writing to the Board on or before March 15, 1981.

The Board has attached one very important provision to its willingness to co-operate in the granting of postponements for the purpose outlined above, which is that it will not countenance the use of the reasons given above for a postponement for other reasons and, therefore, if a case is postponed for the reasons given above it must remain inactive until there is a definitive action from the courts. Therefore, parties are cautioned that if they do, in fact, seek a postponement because of the doubt surrounding the validity of the enactment of the 1980 comprehensive maps, they will be required to wait until there is a decision from the courts on the question before the Board will again assign their case no matter how long the case is suspended.

The purpose of this communication is to alert all parties of record involved of the Board's intention if a request is timely submitted.

Very truly yours,

*William T. Hackett*  
William T. Hackett, Chairman

WTH:s

cc: Dorris S. Flynn

RE: PETITION FOR RECLASSIFICATION : BEFORE THE COUNTY BOARD OF APPEALS  
from D.R. 5.5 to R.O. Zone  
NW corner Timonium Road  
and Gerard Ave., 3rd District : OF BALTIMORE COUNTY

DORRIS S. FLYNN, Petitioner : Case No. R-82-188 (Item 11, Cycle 11)

## ORDER TO ENTER APPEARANCE

To the Honorable, Members of said Board:

Pursuant to the authority contained in Section 524.1 of the Baltimore County Charter, I hereby enter my appearance in this proceeding. You are requested to notify me of any hearing date or dates which may be now or hereafter designated therefor, and of the passage of any preliminary or final Order in connection therewith.

*Peter Max Zimmernan*  
Peter Max Zimmernan  
Deputy People's Counsel

*John W. Hession, III*  
John W. Hession, III  
People's Counsel for Baltimore County  
Rm. 223, Court House  
Towson, Maryland 21204  
494-2188

I HEREBY CERTIFY that on this 18th day of March, 1982, a copy of the foregoing Order was mailed to R. Taylor McLean, Esquire, 102 W. Pennsylvania Avenue, Towson, Maryland 21204, Attorney for Petitioner.

*John W. Hession, III*  
John W. Hession, III

RECEIVED  
BALTIMORE COUNTY  
MAR 19 1 43 PM '82  
COUNTY CLERK  
BY: \_\_\_\_\_

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1726

September Term, 1982

#R-82-188

PEOPLE'S COUNSEL FOR  
BALTIMORE COUNTY

DORRIS S. FLYNN

Liss  
Adkins  
Getty, JJ.

Per Curiam

Filed: July 27, 1983

*Filed 8-11-83*  
1 PM

SEP 10 1982



This case arises out of a petition filed by Dorris S. Flynn, appellee, for zoning reclassification of 1.54 acres of land located at the northwest corner of Timonium Road and Gerard Avenue in Baltimore County, Maryland. The appellee became the owner of the parcel of ground by inheritance in 1980 as the result of the death of her mother. In 1980, upon the adoption of the comprehensive zoning maps for Baltimore County, the subject property was carried over as DR 5.5 from the earlier map adopted at the time of the last prior comprehensive zoning. Mrs. Flynn, who lives primarily in Florida, was unaware of the map adoption procedure. Her mother, when the map was adopted in 1980, was 90 years of age. Shortly after the distribution of her mother's estate the appellee filed her petition to have the zoning of the property reclassified from the DR 5.5 residential zone to the Residential Office (RO) zone which was newly available at the time the 1980 map was adopted.

Appellee's petition, based on error in the map, was considered by the Planning Board of Baltimore County, with all other petitions for reclassification there pending under Baltimore County's cyclic zoning procedure. That Board recommended that .90 acres of the 1.54 acre site be reclassified RO and the remainder remain DR 5.5. Thereafter, the petition was heard before the Board of Appeals of Baltimore County. People's Counsel for Baltimore County, the appellant herein, was the only opponent who appeared in opposition to appellee's petition.

The Board of Appeals found that the continuance of the DR 5.5 zone for this property on the 1980 map was error and that

the RO zone fitted the property perfectly. It concluded that because of adjacent commercial activity and heavy commercial traffic, the property involved could no longer be reasonably restricted solely to uses allowable in moderate density residential zones. The Board stated:

The encroachment of commercial usage -- removes some of the potential for residential use under today's accepted standards for residential use. . . . Section 2-58.15 of the Baltimore County Code, 1980 Supplement, authorizes this Board to grant this requested reclassification if its present zoning is in error. The Board is of the opinion that the present zoning of DR 5.5 for this site is in fact in error and that the requested RO zoning would provide a reasonable use for this property and would also provide a buffer area between the shopping center and the homes on Gerard Avenue and will so order.

The Board of Appeals entered an order granting appellee's petition for reclassification of the property from a DR 5.5 zone to an RO zone.

Appellant entered an appeal from this order in the Circuit Court for Anne Arundel County. The Circuit Court affirmed the Board of Appeals on November 9, 1982. The trial judge, in a brief opinion filed with his order, found that the Board had before it legally sufficient evidence to support its decision and that the Board's action was not arbitrary, capricious or erroneous. It is from this order that the instant appeal was filed. The appellant raises a single issue to be decided by this appeal; i.e., whether the County Board of Appeals wrongfully decided in favor of a petition for zoning reclassification where there was no substantial evidence to support a finding of error in the comprehensive zoning

and the Board chose effectively to substitute its preference for that of the county council?

The subject property is located at the northwest corner of Timonium Road and Gerard Avenue. On the lot of approximately 1.54 acres are located two occupied two-story dwellings. To the north across a right of way are commercial enterprises forming part of the Timonium Shopping Center, zoned BL (Business Local). Immediately to the west is an office building zoned RO. Across Timonium Road and Gerard Avenue to the east and south are several single family dwellings zoned DR 5.5.

During the 1980 map process, the subject property was included in the countywide comprehensive rezoning but was not identified as a specific issue. Upon the filing of this petition, requesting RO zoning, the Planning Board reviewed the property and recommended that the westernmost .90 acre be changed to RO leaving the remainder in DR 5.5. The Board of Appeals granted RO zoning for the entire tract which would entitle the owner to convert the existing buildings to office use, or in the alternative, to raze them and construct a new Class "B" office building, subject to approval by special exception. Such a building could potentially contain three stores with 33,000 square feet of floor space and 25,000 square feet of parking area.

1. None of the owners of these properties objected to the proposed change of the zoning of property here involved and they are not parties to this proceeding.

At the hearing before the Board of Appeals the appellee appeared and testified concerning the noise and odors from the various commercial uses to the north of the property here involved. These commercial uses included a gas station, a theatre, a Chinese restaurant and fish market. She also noted other commercial uses on York Road to the west including the Timonium Race Track, and a 7-11 store on the south side of Timonium Road. There was substantial testimony concerning the traffic on York Road, Gerard Avenue and the Timonium Shopping Center and its effect on the instant property.

The applicant offered as an expert, George Gavrelis, the former Director of Planning for Baltimore County. Mr. Gavrelis was well acquainted with the property and his full and careful description of the extensive commercial uses surrounding the subject property and the general neighborhood was accepted as accurate by the planner for Baltimore County, James Hoswell, who testified for the People's Counsel. Mr. Gavrelis advised the Board of Appeals that commercial development of the area had continued since the last comprehensive zoning. He stated that a building had been constructed near the subject property occupied by a dress shop, a frame shop, a health food shop and the fish market "which brings the actual commercial building -- possibly removed by about 50 feet from the subject property." He testified that the portion of Gerard Avenue in front of the subject property had become a shortcut for vehicular traffic attempting to avoid the Timonium-York Road intersection.

Mr. Gavrelis testified unequivocally that the DR 5.5 zoning continued on the 1980 map constituted error. He noted the failure of the comprehensive map to identify the unique impact of the surrounding commercial and office uses on the subject property, such as "the noise, head-on parking, adjacency to either commercial or office properties, the lack of screening." He concluded that residential use, existing or potential, was not feasible, reasonable or tenable on this property.

He stated his opinion that the map was also in error because the County Council failed to apply to the subject property the newly enacted and available RO zone which suited it to perfection. Mr. Gavrelis stated:

It is my conclusion that this property is not reasonable for residential uses.

I believe it is perfectly suited for office usage within the context of the RO zone, knowing the legislative policy which created that RO zone recognized that there were circumstances where continued moderate residential development was no longer reasonable or feasible, and that the conversion of existing dwellings or even the erection of a new office structure, was a more rational way of dealing with the land use and zoning potentials on a property.

The appellant offered as its expert James Hoswell, the County Planner, whose responsibilities include the review and evaluation of reclassification petitions. He opined that the comprehensive zoning process was the appropriate vehicle to consider this property and "other properties in the immediate area -- that are also impacted by adjacent non-residential uses." On cross-examination, however, when Mr. Hoswell was asked whether he had

"any objection" to Mr. Gavrelis' planning conclusion, he declined to use the word "objection" and substituted the phrase "perhaps, some hesitation." He conceded he agreed 95% on Mr. Gavrelis' planning solution as it affected the rear portion of the property. Mr. Hoswell also concluded that the Planning Board recognized that it was error to zone the property DR 5.5. In explaining the Planning Board's recommendation that about two-thirds of the property be rezoned RO, he assumed that this amounted to an acknowledgement that it "recognize[d] an error in the zoning of the property."

There is, of course, no dispute that there is a strong presumption of the correctness of original zoning and of comprehensive zoning. "[S]trong evidence" of error is required to make the issue of mistake in comprehensive zoning fairly debatable and unless such strong evidence is presented by the applicant, the action of the Board in granting a reclassification is arbitrary and capricious." *Boyce v. Sembly*, 25 Md. App. 43, 50 (1975).

We said in *People's Counsel v. Williams*, 45 Md. App. 617, 624 (1980), quoting from *Tennison v. Shomette*, 38 Md. App. 1, 5 (1977):

Once evidence strong enough to render the issue of rezoning fairly debatable is produced, the change in zoning will be upheld since it is not the function of the courts to substitute their judgment for that of the zoning authority.

Both the appellant and the appellee cite the recent case of *Howard County v. Dorsey*, 292 Md. 351, 355 (1982), in support of

their positions. In that case the Court of Appeals, quoting from *Stratakis v. Beauchamp*, 168 Md. 643, 652-653 (1972), stated the test on judicial review to be as follows:

... Where a legislative body, or a board of county officials, pursuant to authority conferred upon it, has granted a rezoning of property, the question on judicial review is whether or not such action is arbitrary and discriminatory or fairly debatable.

Our reading of *Dorsey* convinces us that it is more supportive of the appellee's contention in this case than that of the appellant because of the factual posture of this controversy. In *Dorsey*, the County Council, sitting as the Zoning Board, had before it a requested reclassification to a manufacturing zone of three acres of residentially zoned land out of a total tract of 15 acres, all of which was residentially zoned. The Howard County Zoning Board denied Dorsey's request to reclassify the zoning of a portion of his land from residential to manufacturing.

On appeal, the Circuit Court for Howard County reversed the order of the Board. On appeal to this Court, the order of the Circuit Court was affirmed in *Howard County v. Dorsey*, 45 Md. App. 692 (1980). The Court of Appeals granted certiorari and reversed the judgment of this Court. The Board had based its refusal to reclassify primarily on a General Plan for Howard County which contemplated residential use of the property in support of a neighborhood school. The Court of Appeals found that no fairly debatable issue had been raised either as to error in the original adoption of the comprehensive zoning maps or any probative evidence

of any events occurring subsequent to the time of the comprehensive zoning which would show that the Council's assumptions and premises at the time of the comprehensive zoning had been proved invalid by the passage of time.

It seems clear to us that in the consideration of the adoption of the comprehensive zoning map the County Council should have at least determined whether the subject property should remain in the DR 5.5 zone or whether it fell within the provisions of Section 203.2 of the Baltimore County Zoning Regulations, which created the RO zone. That section provides as follows:

The RO zoning classification is established -- to accommodate houses converted to office buildings and some small class B office buildings in predominantly residential areas on sites that because of adjacent commercial activity, heavy commercial traffic, or other similar factors, can no longer reasonably be restricted solely to uses allowable in moderate density residential zones.

The Board of Appeals found that there had been error in the adoption of the map and it is now before us on appeal from the Circuit Court for Baltimore County which affirmed the finding of the Board of Appeals that the property should be in the RO zone. Our consideration of the issue is circumscribed by the legal test previously stated in *Dorsey*, supra, (quoting from *Stratakis*, supra).

Applying that test, we conclude that the issue as presented to the Board of Appeals was fairly debatable and that the action of the Board was not arbitrary or discriminatory.

JUDGMENT AFFIRMED, COSTS TO BE PAID BY PEOPLE'S COUNSEL FOR BALTIMORE COUNTY.



Description to Accompany a Zoning Petition  
for Reclassification from an Existing  
D.R. 5.5 Zone to a R.O. Zone

August 28, 1981

Beginning for the same on the northwest side of Timonium Road, 80 feet wide, where it is intersected by the south side of an Existing 16.5 foot Road, as shown on the plat entitled "Resubdivision Plat, Part of Sections A - B and C - Yorkshire and Part of Haverford" dated May 1954 and recorded among the Plat Records of Baltimore County in Plat Book G.L.B. 22 folio 25; said place of beginning being measured North 21°42'57" East 158.97 feet from the centerline intersection of Timonium Road and Hathaway Road; thence from said place of beginning, binding on the northwest side of Timonium Road, the two following lines: (1) South 36°17'20" West 210.13 feet and (2) southwesterly by a curve to the right having a radius of 957.49 feet for the distance of 22.06 feet, said curve being subtended by a chord bearing South 36°56'57" West 22.06 feet, thence leaving said Road, binding on the fillet leading to the north side of Gerard Avenue, as shown on said Plat, (3) westerly by a curve to the right having a radius of 25.00 feet for the distance of 39.39 feet, said curve being subtended by a chord bearing South 82°45'01" West 35.44 feet to the northerly side of said Gerard Avenue 40 feet wide, thence binding on said side of said Avenue, the two following lines: (4) northwesterly by a curve to the left having a radius of 120.00 feet for the distance of 87.04 feet, said curve being subtended by a chord bearing North 72°53'15" West 85.14 feet and (5) South 86°20'00" West 210.94 feet, thence leaving Gerard Avenue, binding on the existing R.O. zone line, (6) North 11°54'00" West 156.98 feet to intersect the south side of the aforementioned 16.5 Foot Road, thence binding on said side of said Road, (7) North 86°58'19" East 497.73 feet to the place of beginning.

Containing 1.540 Acres of land more or less.

*Charles J. Stahl*  
#3046



ROYSTON, MUELLER,  
MCLEAN & REID  
SUITE 600  
108 W. PENNA. AVE.  
TOWSON, MD. 21204  
823-1800

IN RE: : BEFORE THE  
DORRIS S. FLYNN : COUNTY BOARD OF APPEALS  
Petition for Reclassification : OF BALTIMORE COUNTY

STATEMENT OF REASONS FOR RECLASSIFICATION

Error in Zoning Map

In placing a DR 5.5 zoning classification on the subject property, the map is in error. The error is readily apparent when one considers the zoning classifications and the commercial and office uses of the properties surrounding and in the vicinity of the subject property.

Contiguous Uses and Zones

Located about 400 feet east of the York Road in Timonium with frontage on Gerard Avenue and Timonium Road, the subject property is contiguous to properties which are commercial or office in both use and zoning as follows: to the northeast and next to the subject property on Timonium Road is a Mobile gas station (zoned BL); to the north, along the entire northern border of the subject property, is the large Timonium Shopping Center (zoned BL) which stretches to the York Road on the west and is generally opposite the Timonium race track; and immediately to the west of the subject property, and extending the entire length of its western border, is the Elliott Building property consisting of a large, two-story office building on a lot otherwise totally paved for parking.

Commercial Intersections

Gerard Avenue, which now extends to the York Road, is thoroughly commercial at this intersection. At the northeast corner is B&B Auto Glass, a property which is contiguous to the Elliott Building, the westerly neighbor of the subject property.

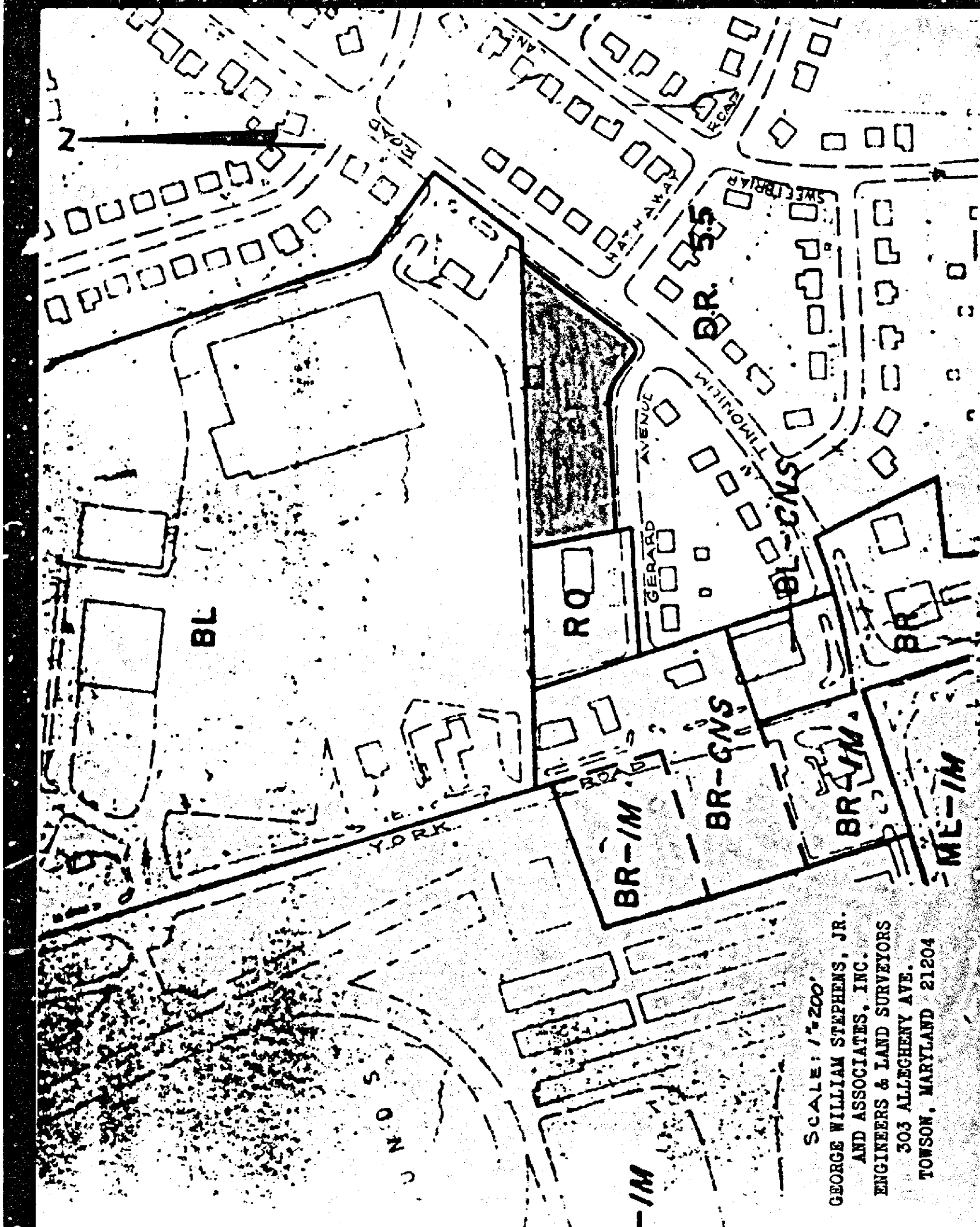
Across Gerard Avenue from B&B on the east side of York Road is an Exxon station, and on the west side of York Road at the Gerard Avenue intersection is an Amaco station and a McDonald's.

The intersection of Timonium Road and York Road is just a block away from the subject property to the southwest. This intersection consists of a bank on the northwest corner, a Massey-Ferguson distributorship on the southwest corner, and Nationwide Datsun and even nearer the subject property, a dairy store on the southeast corner. On the northeast corner of this Timonium and York Roads intersection, a little over 200 feet from the subject property, is the strip shopping center known as the Fairgrounds Center which extends northward along the east side of the York Road to the Exxon station at York Road and Gerard Avenue.

Residential to the South

Across Gerard Avenue from the subject property is a small triangle of residentially zoned and improved property (DR 5.5) and generally to the southeast of the subject property on the southeast side of Timonium Road, the zoning is DR 5.5. However, as pointed out above, on the north side of Gerard and the northwest side of Timonium Road, which form a shallow V or crescent about the subject property, the use and zoning is all commercial and office, so that other than the road frontages, the subject property is surrounded by BL and RO properties. Thus by road and neighbor, the subject property is an integral part of that commercial and office area which surrounds it (consisting of the Mobile station, the large Timonium Shopping Center and the Elliott Building). The subject property is part and parcel of these non-residential use properties sitting in the midst of them like the yolk in a fried egg. As a result, the subject property is clearly not suitable for residential zoning.

- 2 -



SCALE: 1/200'  
GEORGE WILLIAM STEPHENS, JR.  
& ASSOCIATES, INC.  
ENGINEERS & LAND SURVEYORS  
303 ALLEGHENY AVE.  
TOWSON, MARYLAND 21204

Conclusion

Accordingly, it was error to insert this bit of DR 5.5 zoning on the north side of Gerard Avenue and the northwest side of Timonium Road inasmuch as the property to each side of it and the property on top of it is commercial and office in use and zoning. The RO reclassification requested is compatible with the surrounding property and a reasonable buffer between the BL to the north and northeast and the residential to the south.

Respectfully submitted,

*R. Taylor McLean*  
R. Taylor McLean  
102 West Pennsylvania Avenue  
Suite 600  
Towson, Maryland 21204  
823-1800  
Attorney for Dorris S. Flynn,  
Petitioner

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1726

September Term, 1982

PEOPLE'S COUNSEL FOR  
BALTIMORE COUNTY

v.

DORRIS S. FLYNN

Liss  
Ackins  
Getty, JJ.

Per Curiam

Filed: July 27, 1983

PER CURIAM:

This case arises out of a petition filed by Dorris S. Flynn, appellee, for zoning reclassification of 1.54 acres of land located at the northwest corner of Timonium Road and Gerard Avenue in Baltimore County, Maryland. The appellee became the owner of the parcel of ground by inheritance in 1980 as the result of the death of her mother. In 1980, upon the adoption of the comprehensive zoning maps for Baltimore County, the subject property was carried over as DR 5.5 from the earlier map adopted at the time of the last prior comprehensive zoning. Mrs. Flynn, who lives primarily in Florida, was unaware of the map adoption procedure. Her mother, when the map was adopted in 1980, was 90 years of age. Shortly after the distribution of her mother's estate the appellee filed her petition to have the zoning of the property reclassified from the DR 5.5 residential zone to the Residential Office (RO) zone which was newly available at the time the 1980 map was adopted.

Appellee's petition, based on error in the map, was considered by the Planning Board of Baltimore County, with all other petitions for reclassification there pending under Baltimore County's cyclic zoning procedure. That Board recommended that .90 acres of the 1.54 acre site be reclassified RO and the remainder remain DR 5.5. Thereafter, the petition was heard before the Board of Appeals of Baltimore County. People's Counsel for Baltimore County, the appellant herein, was the only opponent who appeared in opposition to appellee's petition.

The Board of Appeals found that the continuance of the DR 5.5 zone for this property on the 1980 map was error and that

the RO zone fitted the property perfectly. It concluded that because of adjacent commercial activity and heavy commercial traffic, the property involved could no longer be reasonably restricted solely to uses allowable in moderate density residential zones. The Board stated:

The encroachment of commercial usage -- removes some of the potential for residential use under today's accepted standards for residential use. Section 2-58.15 of the Baltimore County Code, 1980 Supplement, authorizes this Board to grant this requested reclassification if its present zoning is in error. The Board is of the opinion that the present zoning of DR 5.5 for this site is in fact in error and that the requested RO zoning would provide a reasonable use for this property and would also provide a buffer area between the shopping center and the homes on Gerard Avenue and will so order.

The Board of Appeals entered an order granting appellee's petition for reclassification of the property from a DR 5.5 zone to an RO zone.

Appellant entered an appeal from this order in the Circuit Court for Anne Arundel County. The Circuit Court affirmed the Board of Appeals on November 9, 1982. The trial judge, in a brief opinion filed with his order, found that the Board had before it legally sufficient evidence to support its decision and that the Board's action was not arbitrary, capricious or erroneous. It is from this order that the instant appeal was filed. The appellant raises a single issue to be decided by this appeal; i.e., whether the County Board of Appeals wrongfully decided in favor of a petition for zoning reclassification where there was no substantial evidence to support a finding of error in the comprehensive zoning

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and the Board chose effectively to substitute its preference for that of the county council?

The subject property is located at the northwest corner of Timonium Road and Gerard Avenue. On the lot of approximately 1.54 acres are located two occupied two-story dwellings. To the north across a right of way are commercial enterprises forming part of the Timonium Shopping Center, zoned BL (Business Local). Immediately to the west is an office building zoned RO. Across Timonium Road and Gerard Avenue to the east and south are several single family dwellings zoned DR 5.5.

During the 1980 map process, the subject property was included in the countywide comprehensive rezoning but was not identified as a specific issue. Upon the filing of this petition, requesting RO zoning, the Planning Board reviewed the property and recommended that the westernmost .90 acre be changed to RO leaving the remainder in DR 5.5. The Board of Appeals granted RO zoning for the entire tract which would entitle the owner to convert the existing buildings to office use, or in the alternative, to raze them and construct a new Class "B" office building, subject to approval by special exception. Such a building could potentially contain three stores with 33,000 square feet of floor space and 25,000 square feet of parking area.

1. None of the owners of these properties objected to the proposed change of the zoning or property here involved and they are not parties to this proceeding.

MICROFILMED

At the hearing before the Board of Appeals the appellee appeared and testified concerning the noise and odors from the various commercial uses to the north of the property here involved. These commercial uses included a gas station, a theatre, a Chinese restaurant and fish market. She also noted other commercial uses on York Road to the west including the Timonium Race Track, and a 7-11 store on the south side of Timonium Road. There was substantial testimony concerning the traffic on York Road, Gerard Avenue and the Timonium Shopping Center and its effect on the instant property.

The applicant offered as an expert, George Gavrelis, the former Director of Planning for Baltimore County. Mr. Gavrelis was well acquainted with the property and his full and careful description of the extensive commercial uses surrounding the subject property and the general neighborhood was accepted as accurate by the planner for Baltimore County, James Hoswell, who testified for the People's Counsel. Mr. Gavrelis advised the Board of Appeals that commercial development of the area had continued since the last comprehensive zoning. He stated that a building had been constructed near the subject property occupied by a dress shop, a frame shop, a health food shop and the fish market "which brings the actual commercial building - - - possibly removed by about 50 feet from the subject property." He testified that the portion of Gerard Avenue in front of the subject property had become a shortcut for vehicular traffic attempting to avoid the Timonium-York Road intersection.

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Mr. Gavrelis testified unequivocally that the DR 5.5 zoning continued on the 1980 map constituted error. He noted the failure of the comprehensive map to identify the unique impact of the surrounding commercial and office uses on the subject property, such as "the noise, head-on parking, adjacency to either commercial or office properties, the lack of screening." He concluded that residential use, existing or potential, was not feasible, reasonable or tenable on this property.

He stated his opinion that the map was also in error because the County Council failed to apply to the subject property the newly enacted and available RO zone which suited it to perfection. Mr. Gavrelis stated:

It is my conclusion that this property is not reasonable for residential uses.

I believe it is perfectly suited for office usage within the context of the RO zone, knowing the legislative policy which created that RO zone recognized that there were circumstances where continued moderate residential development was no longer reasonable or feasible, and that the conversion of existing dwellings or even the erection of a new office structure, was a more rational way of dealing with the land use and zoning potentials on a property.

The appellant offered as its expert James Hoswell, the County Planner, whose responsibilities include the review and evaluation of reclassification petitions. He opined that the comprehensive zoning process was the appropriate vehicle to consider this property and "other properties in the immediate area - - that are also impacted by adjacent non-residential uses." On cross-examination, however, when Mr. Hoswell was asked whether he had

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"any objection" to Mr. Gavrelis' planning conclusion, he declined to use the word "objection" and substituted the phrase "perhaps, some hesitation." He conceded he agreed 95% on Mr. Gavrelis' planning solution as it affected the rear portion of the property. Mr. Hoswell also concluded that the Planning Board recognized that it was error to zone the property DR 5.5. In explaining the Planning Board's recommendation that about two-thirds of the property be rezoned RO, he assumed that this amounted to an acknowledgement that it "recognize[d] an error in the zoning of the property."

There is, of course, no dispute that there is a strong presumption of the correctness of original zoning and of comprehensive zoning. "[S]trong evidence" of error is required to make the issue of mistake in comprehensive zoning fairly debatable and unless such strong evidence is presented by the applicant, the action of the Board in granting a reclassification is arbitrary and capricious." *Boyce v. Sembly*, 25 Md. App. 43, 50 (1975).

We said in *People's Counsel v. Williams*, 45 Md. App. 617, 624 (1980), quoting from *Tennison v. Shomette*, 38 Md. App. 1, 5 (1977):

Once evidence strong enough to render the issue of rezoning fairly debatable is produced, the change in zoning will be upheld since it is not the function of the courts to substitute their judgment for that of the zoning authority.

Both the appellant and the appellee cite the recent case of *Howard County v. Dorsey*, 292 Md. 351, 355 (1982), in support of

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their positions. In that case the Court of Appeals, quoting from *Stratakis v. Beauchamp*, 268 Md. 643, 652-653 (1973), stated the test on judicial review to be as follows:

... Where a legislative body, or a board of county officials, pursuant to authority conferred upon it, has granted a rezoning of property, the question on judicial review is whether or not such action is arbitrary and discriminatory or fairly debatable.

Our reading of *Dorsey* convinces us that it is more supportive of the appellee's contention in this case than that of the appellant because of the factual posture of this controversy. In *Dorsey*, the County Council, sitting as the Zoning Board, had before it a requested reclassification to a manufacturing zone of three acres of residentially zoned land out of a total tract of 15 acres, all of which was residentially zoned. The Howard County Zoning Board denied Dorsey's request to reclassify the zoning of a portion of his land from residential to manufacturing.

On appeal, the Circuit Court for Howard County reversed the order of the Board. On appeal to this Court, the order of the Circuit Court was affirmed in *Howard County v. Dorsey*, 45 Md. App. 692 (1980). The Court of Appeals granted *certiorari* and reversed the judgment of this Court. The Board had based its refusal to reclassify primarily on a General Plan for Howard County which contemplated residential use of the property in support of a neighborhood school. The Court of Appeals found that no fairly debatable issue had been raised either as to error in the original adoption of the comprehensive zoning maps or any probative evidence

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of any events occurring subsequent to the time of the comprehensive zoning which would show that the Council's assumptions and premises at the time of the comprehensive zoning had been proved invalid by the passage of time.

It seems clear to us that in the consideration of the adoption of the comprehensive zoning map the County Council should have at least determined whether the subject property should remain in the DR 5.5 zone or whether it fell within the provisions of Section 203.2 of the Baltimore County Zoning Regulations, which created the RO zone. That section provides as follows:

The RO zoning classification is established - - - to accommodate houses converted to office buildings and some small class B office buildings in predominately residential areas on sites that because of adjacent commercial activity, heavy commercial traffic, or other similar factors, can no longer reasonably be restricted solely to uses allowable in moderate density residential zones.

The Board of Appeals found that there had been error in the adoption of the map and it is now before us on appeal from the Circuit Court for Baltimore County which affirmed the finding of the Board of Appeals that the property should be in the RO zone. Our consideration of the issue is circumscribed by the legal test previously stated in *Dorsey*, *supra*, (quoting from *Stratakis*, *supra*).

Applying that test, we conclude that the issue as presented to the Board of Appeals was fairly debatable and that the action of the Board was not arbitrary or discriminatory.

JUDGMENT AFFIRMED, COSTS TO BE PAID BY PEOPLE'S COUNSEL FOR BALTIMORE COUNTY.

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September 30, 1981

Mr. Walter Baiter, Chairman  
Board of Appeals  
Court House  
Towson, Maryland

Dear Mr. Baiter:

Comments on Item #11, Zoning Advisory Committee Meeting for Cycle II, are as follows:

Property Owner: Dorris S. Flynn  
Location: NW/Corner Timonium Road and Gerard Avenue  
Existing Zoning: D.R. 5.5  
Proposed Zoning: R-O  
Acres: 1.540  
District: 8th  
Metropolitan water and sewer are available.

The Zoning Plan, as submitted, does not include enough information to enable the Baltimore County Department of Health to make complete comments.

Very truly yours,

Sam J. Forrest, Director  
BUREAU OF ENVIRONMENTAL SERVICES

LIT/JET/mgt

# Court of Special Appeals

ANNAPOLIS, MARYLAND 21401



HOWARD E. FRIEDMAN  
CLERK

No. 1726, September Term, 1982

The People's Counsel for Baltimore County

John W. Hessian, III, Esquire  
Peter Max Zimmerman, Esquire

vs.

Attorneys for Appellant

Dorris S. Flynn

R. Taylor McLean, Esquire

Attorneys for Appellee

The Record in the captioned appeal was received and docketed on January 20, 1983.

The brief of the APPELLANT is to be filed with the office of the Clerk on or before March 1, 1983.

The brief of the APPELLEE is to be filed with the office of the Clerk on or before 30 days after filing of appellant brief (Rule 1030a2).

This appeal has been set for argument before this Court during the week of June 13, 14, 15, 16, 17, 20, 21, 22, 1983.

Stipulations for extensions of time within which to file briefs will not be granted where the request will delay argument (Rule 1030a(1)).

Counsel is likewise notified to advise the office of the Clerk (Pursuant to Rule 1047) of intent to submit on brief at the time of filing his brief. No submission on brief will be accepted within ten (10) days prior to the date of argument without specially obtained permission of Court.

Howard E. Friedman  
Clerk of the Court of  
Special Appeals of Maryland

RECEIVED  
BALTIMORE COUNTY